

Schedule 1
Approved Escrow Deed (Sub-contractors)



RailCorp

Approved Escrow Deed (Sub-contractors)

Assurex Escrow Pty Ltd

ABN 64 008 611 578

Escrow Agent

Rail Corporation New South Wales

ABN 59 325 778 353

RailCorp

Reliance Rail Pty Limited

ABN 18 411 280 427 48 077 619 824

PPP Co

Downer EDI Rail Pty Ltd

ABN 92 000 002 031

Deliverable Recipient

Australian Rail Technology Projects Pty Ltd.

ABN 33 127 774 627

Sub-contractor

B.T. *[Signature]* *[Signature]*

The Clayton Utz contacts for this document are
Owen Hayford and Sergio Capelli on + 61 2 9353 4000

Clayton Utz

Lawyers

Levels 22-35 No. 1 O'Connell Street Sydney NSW 2000 Australia

PO Box H3 Australia Square Sydney NSW 1215

T + 61 2 9353 4000 F + 61 2 8220 6700

www.claytonutz.com

Approved Escrow Deed made at Sydney on ~~DO NOT DATE~~ 2011

Parties

Assurex Escrow Pty Limited ABN 64 008 611 578 of
Level 5, Suite 93, 330 Wattle Street, Ultimo, New South Wales
("Escrow Agent")

Rail Corporation New South Wales ABN 59 325 778 353
of Level 6, 18 Lee Street, Chippendale, New South Wales

Reliance Rail Pty Limited ABN 18 111 280 427 as trustee
of the Reliance Rail Trust of Level 6, ABN Amro Tower, 88
Phillip Street, Sydney, New South Wales

("PPP Co")

Downer EDI Rail Pty Limited ABN 92 000 002 031 of 2B
Factory Street, Granville, New South Wales, 2124

("Deliverable Recipient")

Australian Rail Technology Projects Pty Ltd.
ABN 33 127 774 627 of 10, Brennan Close, Hornsby, New
South Wales 2077

("Sub-contractor")]

~~Level 20, 177
Pitt Street, Sydney~~
37
Level 22, 323 Castle-
reagh St, Sydney

48 077 619 824
Level 9
333 George Street

Recitals

- A. On or about the date of this deed, following completion of a public tender process, RailCorp entered in a project contract with PPP Co in relation to the design, construction, manufacture, commissioning and maintenance of certain deliverables including railway cars, simulators and a maintenance facility (the "**Project Contract**").
- B. Pursuant to the terms of the Project Contract, PPP Co has granted, and has or will procure that certain third parties grant, a licence to RailCorp to use certain materials included in the Deliverables (as defined in the Project Contract) for defined purposes ("**Licensed Materials**").
- C. On or about the date of this deed, the Deliverable Recipient entered into an agreement under which the Deliverable Recipient is engaged to design, manufacture, deliver or supply some of the Licensed Materials (the "**Deliverable Recipient Materials**").
- D. The Deliverable Recipient has entered into a sub-contract with the Sub-contractor under which the Sub-contractor is engaged to design, manufacture, deliver or supply certain Recipient Materials (the "**Sub-Contractor Materials**").
- E. Access to the Relevant Source Code in the Sub-contractor Materials ("**Sub-contractor Source Code**") may be required by any of RailCorp, PPP Co and/or the Deliverable Recipient.
- F. The Sub-contractor has agreed to deposit with the Escrow Agent three copies of the Sub-contractor Source Code to enable RailCorp, PPP Co and/or the Deliverable Recipient (as the case may be) to obtain access to the Sub-contractor Source Code in the circumstances specified in this deed.

Operative Provisions

1. Definitions

1.1 Definitions

In this deed the following terms have the following meanings:

"Approved Escrow Agent" has the meaning given to that term in the Project Contract.

"Business Day" means a day in New South Wales that:

- (a) is not a Saturday, Sunday or Public Holiday and on which banks are open for business generally; and
- (b) does not fall during the period:
 - (i) commencing on the Monday before 24 December in any given year; and
 - (ii) ending on the Friday following 1 January of the following year.

"Core Contract" has the meaning given to that term in the Project Contract.

"Deliverable Recipient Agreement" means the agreement referred to in Recital C.

"Deliverable Recipient Escrow Release Event" has the meaning given to that term in clause 10(f).

"Deposit Package" means a copy of the Sub-contractor Source Code as further described in schedule 2 in the possession of the Sub-contractor, and as updated from time to time in accordance with this deed.

"Escrow Fee" means the fee payable by RailCorp under clause 7.

"Escrow Release Event" means a RailCorp Escrow Release Event, PPP Co Escrow Release Event and/or Deliverable Recipient Escrow Release Event.

"Event of Insolvency" means:

- (a) a "controller" (as defined in section 9 of the Corporations Act), manager, trustee, receiver, receiver and manager, administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (e) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;

- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person; or
- (g) any act is done or event occurs which under the laws from time to time of a country other than Australia has an analogous or similar effect to any of the events in paragraphs (a) - (f).

"Intellectual Property Rights" includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields and all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing.

"Licensed Materials" means the materials referred to in Recital B.

"Modification" means any amendment, modification, update, enhancement or other change.

"Mortgaged Rights Notice" means the Mortgaged Rights Notice attached as Annexure A.

"Original Source Code Escrow Agent" has the meaning given to that term in the Project Contract.

"Original Source Code Escrow Agreement" has the meaning given to that term in the Project Contract.

"PPP Co Escrow Release Event" has the meaning given to that term in clause 10(e)

"Project Contract" has the meaning given in Recital A.

"Public Holiday" means any day which is a public holiday in New South Wales.

"Quarter End" means each 3 month period ending 31 March, 30 June, 30 September or 31 December.

"RailCorp Escrow Release Event" has the meaning given to that term in clause 10(d)

"Relevant Source Code" has the meaning given to that term in the Project Contract.

"Reliance Rail Trust" means the trust so entitled created by the Trust Deed.

"Security Interest" has the meaning given to that term in the Project Contract.

"Security Trustee" means the Security Trustee specified in the Mortgaged Rights Notice.

"Sub-contract" means the agreement referred to in Recital D.

"Trust" means the Reliance Rail Trust.

"Trust Deed" means the constitution of the Trust dated 5 October 2005 and executed by the Trustee.

1.2 **Capacity**

PPP Co enters into this agreement as trustee of the Trust.

2. **Appointment of the Escrow Agent**

The Escrow Agent is hereby appointed jointly by the Sub-contractor, the Deliverable Recipient, PPP Co and RailCorp and, subject to the terms of

this deed, is granted full power and authority to act on behalf of each party to this deed.

3. Duration

This deed shall commence on the date of this deed and remain in force until:

- (a) all of the Deposit Package is released in accordance with this deed; or
 - (b) this deed is otherwise terminated.
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4. Sub-contractor's obligations

4.1 Deposit Package

- (a) The Sub-contractor shall deliver to and deposit with (or procure the delivery of and deposit with) the Escrow Agent three copies of the Deposit Package within ten (10) Business Days of the date of the Sub-contract .
- (b) Within ten (10) Business Days of each Quarter End during the term of the Sub-contract, the Sub-contractor will update the Deposit Package by promptly delivering to the Escrow Agent a copy of all Sub-contractor Source Code which has been created by the Sub-contractor or has come into Sub-contractor's possession during the relevant quarter (including any Sub-contractor Source Code to which Modifications have been made), to ensure that the Deposit Package is current as at the Quarter End.

4.2 Warranty

The Sub-contractor warrants that the Deposit Package:

- (a) (to the extent it consists of software and to the best of its knowledge and belief) is, and will at all relevant times remain, free from any virus or program device which would prevent any part of the Deposit Package from performing its desired function or which would prevent or impede a thorough and effective verification thereof; and
- (b) will be fully up to date following each deposit made by the Sub-contractor in accordance with clause 4.1(b).

4.3 Licence

The Sub-contractor grants to the Escrow Agent a licence to enable the Escrow Agent to deal with the Deposit Package as is necessary to enable the Escrow Agent to comply with its obligations under this deed.

5. Escrow Agent's Obligations

- (a) The Escrow Agent shall accept custody of the Deposit Package on the date of delivery in accordance with clause 4 of this deed and, subject to the terms of this deed, shall hold the Deposit Package on behalf of the Sub-contractor, the Deliverable Recipient, PPP Co and RailCorp.
- (b) The Escrow Agent shall take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Deposit Package while it is in the possession, custody or control of the Escrow Agent including storage of the Deposit Package in a secure area that is protected from access by unauthorised persons.

- (c) The Escrow Agent shall maintain a register of all the Relevant Source Code deposited, stored and released pursuant to this deed and shall promptly comply with a request by the Sub-contractor, the Deliverable Recipient, PPP Co or RailCorp to be permitted to inspect the register during normal business hours, or be provided with a copy of such register.
- (d) The Escrow Agent shall not have any obligation or responsibility:
 - (i) to determine the nature, completeness or accuracy of the Deposit Package; or
 - (ii) for any transaction between all or any of the Sub-contractor, the Deliverable Recipient, PPP Co and RailCorp, other than the performance of its obligations under this deed with respect to the Deposit Package.
- (e) If any or all copies of the Deposit Package are lost, damaged or destroyed while in the possession, custody or control of the Escrow Agent, the Escrow Agent shall immediately notify the Sub-contractor, the Deliverable Recipient, PPP Co and RailCorp in writing.
- (f) Unless this deed is terminated the Sub-contractor shall, within 10 Business Days of receiving notice under clause 5(e), deposit a further copy or copies (as applicable) of the Deposit Package with the Escrow Agent.
- (g) Where the loss, damage or destruction of the Deposit Package is caused by a breach by the Escrow Agent of the Escrow Agent's obligations under this deed, the Escrow Agent must reimburse the Sub-contractor for the reasonable cost of replacing the Deposit Package.

6. Confidentiality

- (a) The Escrow Agent shall not make public or disclose to any person any information about this deed or the Deposit Package except as permitted by this deed or as required by law.
- (b) The Escrow Agent shall not reproduce, allow or cause to be reproduced a copy of the Deposit Package or any part thereof.
- (c) The Escrow Agent shall ensure that its employees observe the provisions of this clause 6.
- (d) The obligations of this clause shall survive the termination of this deed.

7. Escrow fees

- (a) RailCorp shall pay the Escrow Agent for the services provided by the Escrow Agent under the deed as specified in schedule 1. Such fees shall be due in full within 30 days of the receipt by RailCorp of an invoice. Payment of the fees as and when due and payable is an essential term of this deed.
- (b) RailCorp must pay to the Escrow Agent any amount which is payable by RailCorp on account of goods and services tax, value added tax or any other tax ("GST") on any service or supply made by the Escrow Agent under this deed ("GST amount").
- (c) At least 14 days before the date of payment of any GST amount, the Escrow Agent must provide to RailCorp a tax invoice

compliant with the legislation under which the relevant GST is imposed.

- (d) Nothing in this clause requires RailCorp to pay an amount on account of a fine, penalty, interest or other amount for which the Escrow Agent is liable as a consequence of a default of the Escrow Agent, its employees, agents or any other person acting for the Escrow Agent.
- (e) Notwithstanding the above, all expenses and disbursements incurred by the Escrow Agent in connection with this deed must be borne wholly and completely by the Escrow Agent.
- (f) Subject to clause 5(g), all expenses and disbursements incurred by PPP Co, the Deliverable Recipient or the Sub-contractor in connection with this deed must be borne wholly and completely by PPP Co, the Deliverable Recipient and the Sub-contractor respectively.

8. Tests

8.1 RailCorp, PPP Co and Deliverable Recipient may confirm Deposit Package

- (a) RailCorp, PPP Co, the Deliverable Recipient or an independent assessor appointed in writing by and acting on behalf of RailCorp, PPP Co or the Deliverable Recipient ("**the Inspector**") may, prior to the Sub-contractor depositing the Deposit Package (or any update thereof) with the Escrow Agent verify that the proposed Deposit Package contains the correct Relevant Source Code and is otherwise in accordance with this deed.
- (b) The Sub-contractor will notify RailCorp, PPP Co and the Deliverable Recipient of its intention to deposit the Deposit Package (or any update thereof) 10 Business Days before the deposit of the Deposit Package (or update thereof) and will do all things reasonably requested by the party undertaking the verification ("**Verifying Party**") including, but not limited to, providing the Verifying Party with access to its premises, suitably qualified personnel and suitable computer facilities, for the purpose of allowing the Inspector to verify the Deposit Package. The Verifying Party will give notice of its intention to verify the Deposit Package to the other parties in accordance with clause 18.

8.2 Responsibility of Escrow Agent

The Escrow Agent has no responsibility for verification of the Deposit Package.

8.3 Costs

The cost of any such verification will be borne by the Verifying Party unless the verification shows that the Deposit Package does not contain the correct Relevant Source Code or is otherwise not in accordance with this deed in which case the Sub-contractor must reimburse the Verifying Party for its costs of the verification including any amounts paid to the Inspector.

8.4 Deficiencies

If the Inspector discovers any deficiency in the Deposit Package, the Requesting Party must give the other parties notice of such deficiency and may require the Sub-contractor to correct the deficiency, at the expense of the Sub-contractor, within 10 Business Days (or such other period as

RailCorp may agree, acting reasonably) and in this respect time is of the essence.

9. Intellectual Property

- (a) All Intellectual Property Rights in the Deposit Package shall be determined in accordance with the Project Contract, the Deliverable Recipient Agreement and the Sub-contract.
- (b) The Sub-contractor hereby grants a licence to the Escrow Agent to deal with the Deposit Package as necessary to enable the Escrow Agent to comply with its obligations under clause 10.

10. Release of the Deposit Package

- (a) The Escrow Agent shall not release, or allow access to, the Deposit Package or any component of the Deposit Package except in accordance with the terms of this deed.
- (b) The Escrow Agent shall release the Deposit Package (or specified components of the Deposit Package) to RailCorp, PPP Co and/or the Deliverable Recipient upon written notice from the Sub-contractor.
- (c) If an Escrow Release Event occurs, then:
 - (i) the party to whom the Escrow Release Event relates ("**Notifying Party**") may require the Deposit Package to be released (or specified components thereof) by providing written notice of such event to the Escrow Agent and the other parties specifying the components of the Deposit Package that it requires to be released (a "**Release Notice**");
 - (ii) if the Sub-contractor does not, within 3 Business Days of receiving such notice (or being deemed to receive such notice in accordance with clause 18(e)), provide to the Escrow Agent and to each other party written notice objecting to the release of the Deposit Package specified in the Release Notice, the Escrow Agent shall immediately release to the Notifying Party the components of the Deposit Package specified in the Release Notice;
 - (iii) unless otherwise directed by:
 - A. the Sub-contractor and the Notifying Party jointly in writing; or
 - B. a court order,the Escrow Agent shall, in any event, release the Deposit Package or such part of it as specified in the Release Notice to the Notifying Party 7 Business Days after receiving the Release Notice; and
 - (iv) in the event the Escrow Agent is unable to identify any component of the Deposit Package specified in the Release Notice, it will release the entire Deposit Package under paragraphs (ii) and/or (iii).
- (d) A **RailCorp Escrow Release Event** means the occurrence of any of the following events:

- (i) RailCorp exercises its step-in rights under clause 48 of the Project Contract as a direct or indirect result of (in RailCorp's reasonable opinion):
 - A. a breach by the Sub-contractor of the Sub-contract; or
 - B. the occurrence of an event affecting or involving the Sub-contractor analogous to an event referred to in clause 50.1 of the Project Contract,and access to any part of the Deposit Package is needed by RailCorp to perform the relevant obligation; or
 - (ii) the Project Contract is terminated by RailCorp under clause 50.2 of the Project Contract as a direct or indirect result of (in RailCorp's reasonable opinion):
 - A. a breach by the Sub-contractor of the Sub-contract; or
 - B. the occurrence of an event affecting or involving the Sub-contractor analogous to an event referred to in clause 50.1 of the Project Contract.
- (e) **A PPP Co Escrow Release Event** means the occurrence of any of the following events:
- (i) PPP Co exercises its step-in rights under a Core Contract as a direct or indirect result of (in PPP Co's reasonable opinion):
 - A. a breach by the Sub-contractor of the Sub-contract; or
 - B. the occurrence of an event affecting or involving the Sub-contractor analogous to an event referred to in clause 50.1 of the Core Contract,and access to any part of the Deposit Package is needed by PPP Co to perform the relevant obligation; or
 - (ii) a Core Contract is terminated under clause 50.2 of the relevant Core Contract as a direct or indirect result of (in PPP Co's reasonable opinion):
 - A. a breach by the Sub-contractor of the Sub-contract; or
 - B. the occurrence of an event affecting or involving the Sub-contractor analogous to an event referred to in clause 50.1 of the Core Contract.
- (f) **A Deliverable Recipient Escrow Release Event** means the occurrence of any of the following events:
- (i) the Deliverable Recipient exercises any step-in rights it may have under the Sub-contract and access to any part of the Deposit Package is needed to perform any relevant obligation; or
 - (ii) the Sub-contract is terminated by the Deliverable Recipient as a result of a breach by the Sub-contractor

of the Sub-contract or an event affecting or involving the Sub-contractor analogous to an event referred to in clause 50.1 of the Project Contract.

- (g) The existence of a dispute between:
- (i) PPP Co and RailCorp in relation to:
 - A. the termination of the Project Contract; or
 - B. RailCorp's entitlement to exercise its rights under clause 48 of the Project Contract, or
 - (ii) PPP Co and the Core Contractor in relation to:
 - A. termination of the Core Contract; or
 - B. PPP Co's entitlement to exercise rights set out in the Core Contract which are equivalent to those set out in clause 48 of the Project Contract (if any), or
 - (iii) the Deliverable Recipient and the Sub-contractor in relation to:
 - A. termination of the Sub-contract; or
 - B. the Deliverable Recipient's entitlement to exercise any step in rights set out in the Sub-contract,
- cannot, of itself, constitute a dispute under this deed.
- (h) Notice by RailCorp, PPP Co, the Deliverable Recipient or the Sub-contractor under clause 10(c) must be in the form of a statutory declaration made by an officer of RailCorp, PPP Co, the Deliverable Recipient or the Sub-contractor (as the case may be), setting out in detail the grounds upon which release of the Deposit Package is sought or objected to (as the case may be) and delivered to each party in accordance with clause 18.
- (i) Where a PPP Co Escrow Release Event or a Deliverable Recipient Escrow Release Event occurs, PPP Co or the Deliverable Recipient (as the case may be) will immediately notify RailCorp and, if directed by RailCorp, PPP Co or the Deliverable Recipient (as the case may be) will provide the Sub-contractor with a Release Notice pursuant to clause 10(c).
- (j) Where the Deposit Package (or any part thereof) is released to PPP Co and/or the Deliverable Recipient pursuant to this clause 10, the Sub-contractor agrees that PPP Co and/or the Deliverable Recipient (as the case may be) may deposit the Deposit Package (or such part thereof) with the Original Source Code Escrow Agent and/or the Approved Escrow Agent on the terms of the Original Source Code Escrow Agreement and/or the terms of the Approved Escrow Deed to which the Deliverable Recipient is a party.

11. Permitted use

- (a) In the event the Deposit Package is released to the Notifying Party in accordance with clause 10, the Notifying Party shall only be entitled to use the Deposit Package in accordance with its rights under the Project Contract, Deliverable Recipient Agreement or the Sub-contract (as applicable).

- (b) Where the Escrow Release Event occurred because the Notifying Party exercised its step-in rights under the Project Contract, the Core Contract or the Sub-contract (as the case may be), the Notifying Party will return the Deposit Package (or any released components thereof) including any Modifications made to the Deposit Package to the Escrow Agent, and a copy to the Sub-contractor, within 7 days of the Notifying Party ceasing to exercise its step in right.
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12. Termination

12.1 Termination by RailCorp, PPP Co, the Deliverable Recipient or the Sub-contractor

This deed may be terminated by:

- (a) either RailCorp, PPP Co, the Deliverable Recipient or the Sub-contractor immediately if the Escrow Agent:
- (i) becomes subject to an Event of Insolvency; or
 - (ii) is in breach of any obligation under this deed so that there is a substantial failure by the Escrow Agent to perform or observe its obligations under this deed; or
- (b) RailCorp upon 7 days prior written notice to the Escrow Agent, and upon such termination:
- (c) no refund of advance payment of the Escrow Fee will be payable; and
- (d) the parties shall enter into such other escrow deed on substantially similar terms to this deed, and do all such things reasonably required by RailCorp to give effect to the new escrow arrangement for the Deposit Package with a different escrow agent.

12.2 Termination by Escrow Agent

This deed may be terminated by the Escrow Agent giving 3 months written notice to PPP Co, RailCorp, the Deliverable Recipient and the Sub-contractor subject to the pro-rata refund of any advance payment of the Escrow Fee and, upon such termination, the parties shall enter into such other escrow agreement on substantially similar terms to this deed, and do all such things reasonably required by RailCorp to give effect to the new escrow arrangement for the Deposit Package with a different escrow agent.

12.3 Termination by Sub-contractor

- (a) The Sub-contractor may terminate this deed by giving 10 Business Days prior written notice to RailCorp, PPP Co, the Deliverable Recipient and the Escrow Agent if:
- (i) the Sub-contract is terminated by the Sub-contractor and if applicable RailCorp has not notified PPP Co of its intention to take a novation of the Sub-contract and the time given for RailCorp to exercise that right has expired; or
 - (ii) the Sub-contract expires, and no Escrow Release Event has arisen in connection with the circumstances set out in (i) or (ii) above.
- (b) The Escrow Agent must within 5 Business Days of receiving notice pursuant to clause 12.3(a) (or being deemed to receive such notice in accordance with clause 18(e)) provide written notice to

RailCorp, PPP Co, the Deliverable Recipient and the Sub-contractor confirming that it has received a notice under clause 12.3(a), and:

- (i) specifying any part of the Deposit Package which the Escrow Agent continues to hold; or
 - (ii) stating that the Escrow Agent is not in possession of any part of the Deposit Package.
- (c) If RailCorp, PPP Co or the Deliverable Recipient do not, within 10 Business Days of receiving a written notice pursuant to clause 12.3(b)(i) (or being deemed to receive such notice in accordance with clause 18(e)) provide to each of the other parties a notice objecting to the return to the Sub-contractor of any part of the Deposit Package held by the Escrow Agent, or such part of it as specified by RailCorp, PPP Co or the Deliverable Recipient (as the case may be), the Escrow Agent shall immediately release to the Sub-contractor any part of the Deposit Package specified in the notice referred to in clause 12.3(b)(i).
- (d) Unless otherwise directed by:
- (i) the Sub-contractor, the Deliverable Recipient, PPP Co and RailCorp jointly in writing; or
 - (ii) a court order;
- the Escrow Agent will, in any event, return any part of the Deposit Package that it continues to hold to the Sub-contractor within 15 Business Days of receiving notice pursuant to clause 12.3(a) (or being deemed to receive such notice in accordance with clause 18(e)).

13. Amendments

This deed may only be varied by a document signed by or on behalf of each party.

14. Governing law

14.1 Governing law

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

14.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 14.2(a).

15. Compliance with laws

The Escrow Agent must, in carrying out its obligations under this deed, comply with all applicable laws.

16. Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power

or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

17. Assignment

17.1 Assignment by RailCorp

RailCorp may assign, novate, transfer or otherwise deal with its interest in, or obligations under, this deed without PPP Co's, the Deliverable Recipient's, the Sub-contractor's or the Escrow Agent's prior approval, in the circumstances set out in clause 41.1 of the Project Contract.

17.2 Assignment by PPP Co, the Deliverable Recipient or the Sub-contractor or Escrow Agent

Neither PPP Co, the Deliverable Recipient, the Sub-contractor nor the Escrow Agent may assign, novate, transfer, mortgage, charge or otherwise deal with its interest in, or obligations under, this deed without RailCorp's prior approval (which must not be unreasonably withheld).

18. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (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)

PPP Co

Name: Reliance Rail Pty Limited
Address: ~~Level 6, ABN AMRO Tower, 88 Phillip
Street,~~
Sydney, New South Wales, 2000
Fax: ~~+61 2 9087 4000~~
For the attention of: PPP Co's Representative

Deliverable Recipient

Name: Downer EDI Rail Pty Ltd
Address: 2B Factory Street Granville New South
Wales 2124

Fax: + 61 2 8339 6444
For the attention of: Contractor's Representative (PPP Project)

JA 3.7.

P
Level 9
333 George Street
Sydney

Sub-contractor

Name: Australian Rail Technology Projects Pty Ltd.

Address: 10, Brennan Close, Hornsby New South
Wales 2077

Fax: + 61 2 9482 5726

For the attention of: Garry Lougher

Escrow Agent

Name: Assurex Escrow Pty Limited

Address: Level 5, Suite 93, 330 Wattle Street,
Ultimo, New South Wales, 2007

Fax: + 61 2 9211 5940

For the attention of: Legal Counsel

- (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 18(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.

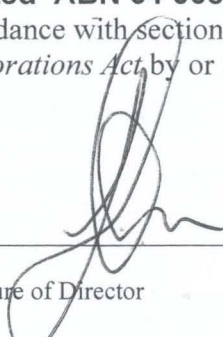
19. Security Interest

- (a) The parties acknowledge that PPP Co has granted a Security Interest (including by way of charge and mortgage) over all of its present and future assets (including this deed) in favour of persons who provide it with financial accommodation (or representatives of them). The parties consent to that Security Interest and any future Security Interests it may grant in favour of any such persons.

- (b) The parties agree with one another, and by virtue of the charge and mortgage in favour of the Security Trustee, with the Security Trustee, that the Security Trustee and any receiver, receiver and manager, agent or attorney appointed by it may to the extent permitted by the terms of any such Security Interest:
- (i) exercise all or any of the rights, powers and remedies and/or perform and observe the obligations of PPP Co under or in connection with this deed as if it were PPP Co;
 - (ii) take any steps to remedy or procure the remedy of any default by PPP Co; or
 - (iii) assign, novate, transfer or otherwise dispose of all or any of PPP Co's rights and/or obligations under or in connection with and/or interest in this deed or any property the subject of it and the parties agree to do anything reasonably requested by the Security Trustee to give effect to that assignment, novation, transfer or disposal.
- (c) The parties further agree with one another, and by virtue of the charge and mortgage in favour of the Security Trustee, with the Security Trustee, that any purported variation or replacement (or agreement to the same), termination by agreement, release or waiver by PPP Co under or in connection with this deed is ineffective unless the Security Trustee has first consented to it.
- (d) The Escrow Agent and the Sub-contractor each:
- (i) acknowledges receipt of the Mortgaged Rights Notice; and
 - (ii) must complete and deliver to the Security Trustee at the address set out in the Mortgaged Rights Notice (and copy to PPP Co) the endorsement in the Mortgaged Rights Notice within 7 days of the date of this deed.

Executed as an deed
Executed by **Assurex Escrow Pty
Limited ABN 64 008 611 578** in
accordance with section 127 of the
Corporations Act by or in the presence of:

Signature of Director



John Quigley

Name of Director in full

Executed for and on behalf of **RailCorp
Corporation New South Wales ABN 59
325 778 353** by or in the presence of:

Signature of Witness



BARBARA ANN FILIPOWSKI

Name of Witness in full

Signature of Secretary/other Director



Robert Lawrence Quigley

Name of Secretary/other Director in full

Signature



IRENE RUSAK

Name of Signatory in full

Signed sealed and delivered for and on behalf of **Reliance Rail Pty Limited** in its capacity as trustee of the Reliance Rail Trust by in accordance with Section 127 of the Corporations Act by or its Attorney under a Power of Attorney dated in the presence of: and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of Witness
Director

JOHN B. HARKNESS

Name of Witness in full
Director

Executed by **Downer EDI Rail Pty Ltd** ABN 92 000 002 031 by or in the presence of:

Signature of Director

RICHARD STEPHENSON

Name of Director in full

Executed by **Australian Rail Technology Projects Pty Ltd. ABN 33 127 774 627** by or in the presence of:

Signature of Director

Alexander Pashkov

Signature of Attorney

Secretary

ERIN A. M. FLAHERTY

Name of Attorney in full

Secretary

Signature of Secretary/other Director

Peter John Tompkins

Name of Secretary/other Director in full

Signature of Secretary/other Director

GARY LOUGHEL

Name of Director in full

Name of Secretary/other Director in full

**Schedule 1
Schedule of Fees (GST Exclusive)**

ESTABLISHMENT FEE

(Payable first year only)

Processing of escrow agreement: \$ _____

ANNUAL DEPOSIT FEE

Includes controlled retention of deposits and maintenance of audit records and documentary evidentiary support of deposit movements; processing and certification of up to 4 deposits per annum. *Deposits in excess of 4 per annum will be charged at the Additional Charges rate set out below.*

Includes one Unit of Escrow Storage (one Unit equals one half cubic foot). *Additional Units of Escrow Storage will be charged at the Additional Charges rate set out below* \$ _____

Annual Deposit Fee is based on a 3 party agreement, where one of the parties is Assurex Escrow. Additional parties will be charged at the Additional Charges rate set out below.

ADDITIONAL CHARGES

Each additional party to this Agreement \$ _____

Additional Units of Escrow Storage \$ _____

Add or replace material to existing Deposit Package \$ _____

DEPOSIT PACKAGE RELEASE FEE

Controlled release and delivery of Deposit Package pursuant to Clause 10 of the Agreement

Payable at the time of request: \$ _____

Courier costs to be met by requesting party

REVIEW OF FEES

Fees may be reviewed annually as at each anniversary of the date of the Escrow Agreement and notice of any increase in fees shall be given in writing 1 month prior to the anniversary date

Schedule 2
Description of Deposit Package

[insert description of Deposit Package]

Annexure A - Mortgaged Rights Notice

To: #insert name of Third Party#
#insert address of Third Party#

Reliance Rail Finance Pty Limited (ACN 120 380 805), Reliance Rail Pty Limited in its capacity as trustee for the Reliance Rail Trust and in its personal capacity (ABN 18 111 280 427), Reliance Rail Holdings Pty Limited in its capacity as trustee for the Reliance Rail Holding Trust and in its personal capacity (ABN 46 111 280 169), each individually (the Chargor) - Approved Escrow Deed (Sub-Contractors) (the Mortgaged Document)

We refer to the Mortgaged Document.

WE GIVE YOU NOTICE AS FOLLOWS:

1. Mortgage

By a deed of charge and mortgage dated #insert date# and made between us and Permanent Registry Limited (ACN 000 334 636) Level 4, 35 Clarence Street, Sydney, New South Wales, 2000 (“Security Trustee”) (“Deed of Charge”), we have assigned to the Security Trustee as security for the payment of certain money to the Security Trustee our present and future right, title and interest at any time in connection with the Mortgaged Document.

A reference to “Security Trustee” includes a reference to any successor, or assignee, of the Security Trustee as may be notified to you.

2. Revocation or variation of this notice

The directions contained in this notice cannot be revoked or varied by us except with the written consent of the Security Trustee.

For
Reliance Rail Finance Pty Limited, Reliance Rail Pty Limited in its capacity as trustee for the Reliance Rail Trust and in its personal capacity, Reliance Rail Holdings Pty Limited in its capacity as trustee for the Reliance Rail Holding Trust and in its personal capacity, each individually

.....
Dated:

The terms of the notice set out above are confirmed by the Security Trustee.

For:

Permanent Registry Limited
ACN 000 334 636

.....
Dated:

TO: Permanent Registry Limited

We acknowledge and undertake that:

- (a) we have received the notice set out above;
- (b) we consent to the Chargor entering into the Deed of Charge;
- (c) any appointment of a receiver by the Security Trustee to the Chargor will not, despite any provision of the Mortgaged Document, enable the Third Party to terminate or suspend under the Mortgaged Document;
- (d) prior to exercising any right to terminate the Mortgaged Document we will give you not less than 28 days to cure any breach or default in order to preserve the Mortgaged Document; and
- (e) we have not received notice of any right, title or interest in connection with the Mortgaged Document, other than that of you and the Chargor as contemplated by this notice and of Rail Corporation New South Wales.

For

#insert name of Third Party#

.....
Dated