

CLAYTON UTZ

Capital Commitment Deed

in respect of the Reliance Rail Holding Trust

The Honourable Michael Baird MP, Treasurer
(for and on behalf of the Crown in right of the State of New South Wales)

Reliance Rail Holdings Pty Limited ACN 111 280 169
(in its own right and as trustee of the Reliance Rail Holding Trust)

Reliance Rail Pty Limited ACN 111 280 427
(in its own right and as trustee of the Reliance Rail Trust)

Reliance Rail Finance Pty Limited ACN 120 380 805

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Contents

1.	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	11
1.3	Performance	11
1.4	Project Document and Equity Document	11
1.5	The State's delegate	12
1.6	Notice of Appointment	12
1.7	Appointees of State Delegate	12
1.8	State entities	13
1.9	State Act	13
2.	Restructure Effective Time	13
3.	Conditions	13
3.1	Conditions to subscription	13
3.2	Reasonable endeavours to satisfy Conditions	14
3.3	Anticipated failure to satisfy Conditions	14
3.4	Waiver of Conditions	15
3.5	Failure of Conditions	15
3.6	Notice in relation to satisfaction or waiver of Conditions	15
4.	Top-up funding	15
4.1	Right to procure top-up funding	15
4.2	Terms of Top-Up Amount	16
4.3	State not entitled to withhold payment of Subscription Amount	16
4.4	Re-imbusement of Top-Up Amount	16
5.	Subscription for B Class Notes (Holding)	17
5.1	Subscription and issue	17
5.2	Issue terms	17
5.3	Application	17
6.	Subscription Completion	17
6.1	Time and place	17
6.2	Subscription Completion	17
6.3	Application of funds by the Holding Company	18
6.4	Subscription by Holding Company	18
6.5	Application of funds by the Operating Company	18
6.6	Application of funds by the Finance Company	18
6.7	New constitutions	18
6.8	Amendment to Trust Deeds	19
6.9	Sale and purchase under the Existing Investors Side Deed	19
6.10	Entry in relevant register	20
6.11	Interdependence of obligations	20
6.12	Title and risk	21
7.	Waivers	21
8.	Conduct pending subscription	21
8.1	No distributions or redemptions	21
8.2	Equity Distribution Account	21
8.3	Matters requiring the State's consent	21
8.4	Factors to be considered	22

8.5	Information	22
8.6	Accession Deed	22
9.	Equity Upside	22
10.	Fees	22
10.1	Commitment Fee	22
10.2	Payments subject to available cash flow	23
10.3	Consequence of non-payment of Commitment Fee	23
10.4	Calculation of Commitment Fee	24
11.	Assignment and novation	24
11.1	Permitted assignment without consent	24
11.2	Guarantee of Subscription Amount	24
11.3	Novation	25
11.4	Holding Company's obligations	25
11.5	Effect of novation	25
11.6	No other assignment without consent	25
12.	Payments	25
12.1	Direction	25
12.2	Method of payment	25
12.3	No deduction	26
13.	Representations, warranties and acknowledgements	26
13.1	By each party generally	26
13.2	By each Trustee Party	26
13.3	Specific warranties by the Reliance Rail Group Companies	26
13.4	Reliance on representations and warranties	26
13.5	When representations made and warranties given	26
14.	Termination	26
14.1	Termination for failure to satisfy Conditions	26
14.2	Effect of termination	27
15.	GST	27
15.1	Interpretation	27
15.2	Reimbursements and similar payments	27
15.3	GST payable	27
15.4	Variation to GST payable	27
16.	Notices	28
16.1	How notice to be given	28
16.2	When notice taken to be received	28
17.	General	29
17.1	Amendments	29
17.2	Consents	29
17.3	Costs	29
17.4	Counterparts	29
17.5	Further acts and documents	29
17.6	No merger	29
17.7	Severance	29
17.8	Waivers	30
17.9	Governing law and jurisdiction	30

Schedule 1 Security holders	31
Schedule 2 Mutual representations and warranties	33
Annexure A - Deed of Novation	36

Capital Commitment Deed dated 3 February 2012

- Parties**
- The Honourable Michael Baird MP, Treasurer** for and on behalf of the Crown in right of the State of New South Wales (**State**)
- Reliance Rail Holdings Pty Limited ACN 111 280 169** of Suite 2, Level 9, 333 George Street, Sydney, New South Wales, 2000 (**Holding Company**) in its own right and as trustee of the Reliance Rail Holding Trust (**Holding Trust**)
- Reliance Rail Pty Limited ACN 111 280 427** of Suite 2, Level 9, 333 George Street, Sydney, New South Wales, 2000 (**Operating Company**) in its own right and as trustee of the Reliance Rail Trust (**Operating Trust**)
- Reliance Rail Finance Pty Limited ACN 120 380 805** of Suite 2, Level 9, 333 George Street, Sydney, New South Wales, 2000 (**Finance Company**)

Background

- A. The State has agreed to make an equity capital commitment in relation to the Project and accordingly has agreed to subscribe for the Subscription Securities on and subject to the terms of this deed.
- B. The parties have also agreed to a number of other matters as set out in this deed to facilitate the State's investment in the Project.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Agreed Competitor of [REDACTED] has the meaning given in the Restructure Co-Ordination Deed.

Amending Deed (Holding) has the meaning given in the Restructure Co-Ordination Deed.

Amending Deed (Operating) has the meaning given in the Restructure Co-Ordination Deed.

A1 Class Note (Holding) means a fully paid "A1 Class Note" issued by the Holding Company (as trustee of the Holding Trust) in accordance with the Deed Poll (Holding) and the Equity Subscription Agreement (Holding).

B Class Note means a B Class Note (Holding) or a B Class Note (Operating) (as relevant).

B Class Note (Holding) means a fully paid "B Class Note" issued by the Holding Company (as trustee of the Holding Trust) in accordance with the Deed Poll (Holding) and this deed.

B Class Note (Operating) means a fully paid "B Class Note" issued by the Operating Company (as trustee of the Operating Trust) in accordance with the Deed Poll (Operating) and this deed.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales, Australia.

Capped Reimbursement Amount has the meaning given in clause 4.4(a)(iv).

Commitment Fee has the meaning given in clause 10.1.

Common Terms Deed means the deed entitled "NSW Rolling Stock PPP Common Terms Deed" dated 1 December 2006 between Permanent Custodians Limited, the Finance Company, and others.

Conditions means each condition specified in clause 3.1.

Constitution (Holding) means the constitution of the Holding Company (in its own right).

Constitution (Operating) means the constitution of the Operating Company (in its own right).

Contributor has the meaning given in clause 4.1.

Control means:

- (a) in relation to a corporation:
 - (i) the ability to control, directly or indirectly, the composition of the board of the corporation;
 - (ii) the ability to exercise or control the exercise of the rights to vote in relation to more than 50% of the voting shares or other form of voting equity in the corporation;
 - (iii) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the corporation; or
 - (iv) the capacity to determine, directly or indirectly, the outcome of decisions about the financial and operating policies of the corporation; and
- (b) in relation to a trust:
 - (i) the ability to appoint or remove any trustee of the trust or to appoint any trustee in place of or in addition to any trustee of the trust;
 - (ii) the capacity to determine, directly or indirectly, the outcome of decisions about the financial and operating policies of the trustee of the trust within the meaning of section 50AA of the Corporations Act, or the manner in which the trustee of the trust deals with the income or the capital of the trust at any time;
 - (iii) the ability to nominate or alter the beneficiaries or unitholders of the trust at any time;
 - (iv) where the trust is a unit trust, the ability to exercise or control the exercise of the right to vote in relation to more than 50% of the units in the unit trust; or
 - (v) where the trust is a unit trust, the ability to dispose or exercise control over the disposal of more than 50% of the units in the unit trust,

and "Controlled" has a corresponding meaning.

Corporations Act means the Corporations Act 2001 (Cth).

Creditor has the meaning given in the Common Terms Deed.

Date of Practical Completion has the meaning given in the Project Contract.

Debt has the meaning given in the Common Terms Deed.

Debt Financing Documents has the meaning given in the Common Terms Deed.

Deed of Amendment (Unitholders Agreement) has the meaning given in the Restructure Co-Ordination Deed.

Deed of Novation means the deed of novation contemplated by clause 11.1 and substantially in the form of the Deed of Novation set out in Annexure C.

Deed Poll (Holding) means the deed entitled "Deed Poll (Holding) constituting A1 Class and B Class Notes (Reliance Rail Holding Trust)" executed by the Holding Company (as trustee of the Holding Trust) on 27 November 2006 (as amended by the Amending Deed (Holding)).

Deed Poll (Operating) means the deed entitled "Deed Poll (Operating) constituting A1 Class and B Class Notes (Reliance Rail Trust)" executed by the Operating Company (as trustee of the Operating Trust) on 27 November 2006 (as amended by the Amending Deed (Operating)).

Direct Competitor of [REDACTED] has the meaning given in the Restructure Co-Ordination Deed.

Downer means Downer EDI Limited.

Effective Period means the period from the Restructure Effective Time to the date that is the earlier of:

- (a) the day on which Subscription Completion occurs; and
- (b) the date this deed is terminated in accordance with clause 3.5.

Encumbrance has the meaning given in the Common Terms Deed.

Equity Distribution Account has the meaning given in the Common Terms Deed.

Equity Document has the meaning given in the Common Terms Deed.

Equity Security means a Share and a Unit.

Equity Security Completion has the meaning given in the Existing Investors Side Deed.

Equity Security Holders means each of the persons listed in Part A of Schedule 1 that hold Equity Securities.

Equity Subscription Agreement (Holding) means the agreement entitled "Equity Subscription Agreement (Holding) in respect of the Reliance Rail Holding Trust" dated 27 November 2006 between the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust), the Finance Company, Babcock & Brown Australia Pty Limited, ABN AMRO Australia Pty Limited, the Equity Security Holders and the Note Holders.

Event of Default means any event of default described in clause 7.1 of the Common Terms Deed.

Existing Investors Side Deed means the deed entitled "Existing Investors Side Deed" dated on or about the date of this deed between the Equity Security Holders, the Note Holders and the State.

Facilitation Fee has the meaning given in the Deed of Amendment (Unitholders Agreement).

Facilitation Loans has the meaning given in the Common Terms Deed.

Facilitation Loan Agreement has the meaning given in the Common Terms Deed.

Financial Guarantor Default has the meaning given in the Senior Intercreditor Deed.

Financial Guarantors means FGIC UK Limited and Syncora Guarantee Inc..

Financial Indebtedness has the meaning given in the Common Terms Deed.

First Refinanced Debt means the Senior Bank Debt, Senior Bond Tranche 2 and Senior Bond Tranche 3.

First Refinancing Date means the date that is the later of:

(a) the date on which all Financial Indebtedness of the Reliance Rail Group Companies in respect of the First Refinanced Debt is refinanced; and

(b) [REDACTED]

Governmental Agency has the meaning given in the Restructure Co-Ordination Deed.

GST has the meaning given in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Independent Valuer has the meaning given in the Existing Investors Side Deed.

Insolvency Event has the meaning given in the Common Terms Deed.

Intercreditor Agent has the meaning given in the Common Terms Deed.

Loan Notes has the meaning given in the Senior Bank Loan Note Subscription Agreement.

MDA Retained Amount has the meaning given in the RSM Contractor Undertakings Deed.

New Debt means a loan to be made to the Finance Company to refinance the First Refinanced Debt.

Note Completion has the meaning given in the Existing Investors Side Deed.

Notes means the loan notes comprising A1 Class Notes (Holding) and B Class Notes (Holding).

Note Holder means each of the persons listed in Part B of Schedule 1 that hold Notes.

Obligor has the meaning given in the Common Terms Deed.

Permitted Transferee means, in relation to the State:

(a) any State owned corporation, statutory body or other body corporate Controlled by the government of the State of New South Wales;

- (b) any statutory authority of the government of the State of New South Wales and any department, minister or agency of any authority; and
- (c) any other authority, agency, commission or similar entity having powers or jurisdiction analogous to anything referred to in paragraphs (a) and (b),

so long as such body, authority or entity is an agency of the Crown or is otherwise guaranteed by the State on terms agreed between the State and the Holding Company (acting reasonably).

Profit Amount has the meaning given in the Existing Investors Side Deed (as at the date it is executed).

Project has the meaning given in the Project Contract.

Project Contract means deed entitled "RailCorp Rolling Stock PPP Project Contract No C01645" dated 3 December 2006 between Rail Corporation New South Wales and the Operating Company in its capacity as trustee of the Operating Trust.

Project Bank Account Undertakings has the meaning given in the Common Terms Deed.

Project Document has the meaning given in the Common Terms Deed.

Quarter means each three calendar month period ending on each of 31 March, 30 June, 30 September and 31 December of each calendar year and **Quarterly** has a corresponding meaning.

RailCorp Consent Deed has the meaning given in the Restructure Co-Ordination Deed.

Relevant Trust means:

- (a) in respect of the Holding Company, Reliance Rail Holding Trust; and
- (b) in respect of the Operating Company, Reliance Rail Trust.

Reliance Rail Group means the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust), the Finance Company and any Subsidiary or other entity Controlled from time to time by any of them.

Reliance Rail Group Company means a member of the Reliance Rail Group (collectively the **Reliance Rail Group Companies**).

Reliance Rail Undertakings Deed means the deed entitled "Reliance Rail Undertakings Deed" dated on or about the date of this deed between the State, the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust), the Finance Company and the Financial Guarantors.

Restructure Agreement has the meaning given in the Restructure Co-Ordination Deed.

Restructure Co-Ordination Deed means the deed entitled "Restructure Co-Ordination Deed" dated on or about the date of this deed between the State, the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust), the Finance Company, Rail Corporation New South Wales, the Financial Guarantors, Downer EDI Rail Pty Ltd, Hitachi Australia Pty Ltd, Permanent Custodians Limited, BNY Trust (Australia) Registry Limited, each Equity Security Holder and each Noteholder.

Restructure Effective Time has the meaning given in the Restructure Co-Ordination Deed.

RSM Contractor Undertakings Deed means the deed entitled "RSM Contractor Undertakings Deed" dated on or about the date of this deed between the Operating Company (in its own right and as trustee of the Operating Trust), Downer EDI Rail Pty Ltd and Hitachi Australia Pty Ltd.

Security Trustee has the meaning given in the Common Terms Deed.

Senior Bank Debt means the Financial Indebtedness under and in connection with the Senior Bank Financing Documents.

Senior Bank Financing Documents has the meaning given in the Common Terms Deed.

Senior Bank Lenders has the meaning given in the Common Terms Deed.

Senior Bank Loan Note Subscription Agreement has the meaning given in the Common Terms Deed.

Senior Bond means an inscribed stock issued or to be issued by the Finance Company which is constituted by, and owing under, the deed entitled "NSW Rolling Stock PPP Senior Bond Trust Deed" dated 1 December 2006 between the Finance Company, the Operating Company and Permanent Custodians Limited.

Senior Bond Tranche 2 means the Senior Bonds issued under Pricing Supplement 3 with Bond ID No. AU3FN0001475 and under Pricing Supplement 4 with Bond ID No. AU3FN0001483 by the Finance Company.

Senior Bond Tranche 3 means the Senior Bonds issued under Pricing Supplement 5 with Bond ID No. AU3FN0001491 and under Pricing Supplement 6 with Bond ID No. AU3FN0001509 by the Finance Company.

Senior Debt has the meaning given in the Common Terms Deed.

Senior Intercreditor Deed means the document entitled "NSW Rolling Stock PPP Senior Intercreditor Deed" dated 1 December 2006 between each Reliance Rail Group Company and others.

Set 78 has the meaning given in the Project Contract.

Share means a fully paid ordinary share in the capital of the Holding Company (in its own right).

Special Resolution means a resolution of the shareholders that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

State Act has the meaning given in clause 1.9.

State Delegate has the meaning given in clause 1.5(a).

Stapled Security means a Share, a Unit and a Note.

Subscription Amount means \$175,000,000.

Subscription Completion means the completion of the subscription and issue of the Subscription Securities in accordance with clause 6.

Subscription Funding Date means the date that is the earlier of:

(a) [REDACTED];

- (b) the First Refinancing Date; and
- (c) such other date as specified by the State by notice to the Holding Company, provided that the Holding Company consents to that date being the Subscription Funding Date, such consent not to be unreasonably withheld.

Subscription Securities means 175,000,000 B Class Notes (Holding) (where the face value of each B Class Note (Holding) will be \$1.00).

Subsidiary has the meaning given in the Corporations Act.

Substitution Date has the meaning given in clause 11.5.

Top-Up Amount has the meaning given in clause 4.1.

Total Cost means, in respect of the New Debt, [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

Trigger Event has the meaning given in the Existing Investors Side Deed (as at the date it is executed).

Trust Deed (Holding) means the trust deed dated 24 November 2006 executed by the Holding Company (as trustee of the Holding Trust), constituting the Holding Trust.

Trust Deed (Operating) means the trust deed dated 24 November 2006 executed by the Operating Company (as trustee of the Operating Trust), constituting the Operating Trust.

Trust Deeds means the Trust Deed (Holding) and the Trust Deed (Operating) at the date of this deed, and each of them.

Trustee Party means each of:

- (a) the Holding Company; and
- (b) the Operating Company.

Unit means a fully paid unit in the Holding Trust.

Unitholders Agreement means the agreement entitled "Unitholders Agreement" between the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust), the Finance Company, each of the Equity Security Holders and each of Note Holders dated 27 November 2006.

Unitholders Super Majority Decision has the meaning given in the Unitholders Agreement.

Unpaid Sum means any Commitment Fee that is due and payable by an Obligor but unpaid.

Utilisation Schedule has the meaning given in the Senior Bank Loan Note Subscription Agreement.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
 - (c) **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;
 - (d) 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 replacement or an additional trustee;
 - (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) 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;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) 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 deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
 - (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;
 - (k) a reference to **\$** or **dollar** is to Australian currency;
 - (l) a reference to time is a reference to Sydney, New South Wales, Australia time; and
 - (m) a reference to the State includes any Permitted Transferee to whom the State has assigned or novated its rights and obligations under this deed.

1.3 Performance

Any action required to be performed under any provision of this deed on or before a day which is not a Business Day must be performed on or before the immediately following Business Day.

1.4 Project Document and Equity Document

The parties agree that this deed is a Project Document and an Equity Document.

1.5 The State's delegate

- (a) The State may at any time by written notice to each other party to this deed appoint any person or persons acting severally as its delegate (**State Delegate**), replace any such State Delegate with another person or persons or terminate the appointment of any such State Delegate at its sole discretion.
- (b) Each State Delegate will carry out all of the State's functions under the Restructure Agreements, or any of them, to which the State is a party as agent of the State.
- (c) Each party to this deed acknowledges and agrees that each State Delegate may do all acts, deeds and things (including, but not limited to, the giving of directions, instructions and other notices) on behalf of the State under any Restructure Agreement and that such acts, deeds and things are effective for the purposes of any act of the State under the Restructure Agreements.
- (d) The State agrees to:
 - (i) be bound by anything done or not done by each State Delegate or any appointee of a State Delegate under any Restructure Agreement to which the State is a party; and
 - (ii) ratify anything done or not done by each State Delegate or any appointee of a State Delegate under any Restructure Agreement to which the State is a party.
- (e) For the purposes of this clause 1.5, each State Delegate can be any person who, for the time being, holds or is authorised to act in a position of the State the title of which is nominated by the State under clause 1.6 or by written notice after the date of this deed under and in accordance with clause 1.5(a).

1.6 Notice of Appointment

Until further notice, the State hereby appoints, severally, each of the Treasury Secretary and the Senior Director, Commercial Finance Branch, New South Wales Treasury as its State Delegate under the Restructure Agreements.

1.7 Appointees of State Delegate

- (a) Each State Delegate may:
 - (i) by notice to each other party to this deed, appoint persons to exercise any of the functions of the State Delegate under the Restructure Agreements, or any of them;
 - (ii) not appoint more than one person to exercise a specific function at any one time; and
 - (iii) revoke any appointment under clause 1.7(a) by notice to each other party to this deed.
- (b) All references to the State Delegate include a reference to an appointee under this clause 1.7.

1.8 State entities

For the purposes of this deed the meaning of "State" will not at any time include any other governmental or semi-governmental entity, authority, agency, commission, corporation or body (including those constituted or formed under any statute), local government authority, administrative or judicial body or tribunal including, but not limited to, Rail Corporation New South Wales (ABN 59 325 778 353).

1.9 State Act

Any action, including but not limited to the granting of any waiver, consent, permission or forbearance by the State (**State Act**) in respect of (i) any Restructure Agreement or (ii) any other party to any Restructure Agreement, whether any such State Act is done subject to any conditions, or will be permanent or temporary, will be made in the State's sole discretion and does not, and will not at any time (unless expressly required under any Project Document, Debt Financing Document or Equity Document which is not a Restructure Agreement), require the agreement, consent, acknowledgement or consultation of any other party to any Restructure Agreement, Project Document, Debt Financing Document or Equity Document.

2. Restructure Effective Time

This deed does not become binding on the parties and has no force or effect until the Restructure Effective Time.

3. Conditions

3.1 Conditions to subscription

The obligations of the parties under clauses 5 and 6 are subject to each of the conditions listed in the first column of the following table having been either satisfied or waived in accordance with clause 3.4:

Condition	Right to waive
(a) (Updated model) The Operating Company provides an updated (as at the Subscription Funding Date) financial model of the forecast financial performance of the Reliance Rail Group (including full financial statements) and there is a full audit with assurances, completed by a qualified independent party, of that model and its assumptions.	State
(b) (Senior Bank Debt funded) The Senior Bank Lenders have discharged their obligation to subscribe for the full amount of Loan Notes under the Senior Bank Loan Note Subscription Agreement in the amounts set out in the Utilisation Schedule and on dates materially in accordance with the Utilisation Schedule.	State
(c) (Practical Completion of all train sets) The Date of Practical Completion of Set 78 occurs.	State
(d) (Acceptable refinance achievable) The Finance Company enters into a binding agreement in respect of the New Debt and: (i) the Total Cost of the New Debt does not exceed [REDACTED]	State

Condition	Right to waive
<p>basis points;</p> <p>(ii) the New Debt is on such other terms as agreed with the State, [REDACTED];</p> <p>(A) [REDACTED]</p> <p>(B) [REDACTED]</p> <p>(iii) under the terms of the New Debt, contemporaneously with Subscription Completion, there are no further conditions that must be satisfied in order for financial close of the New Debt to occur.</p>	
<p>(e) (Solvency) No Insolvency Event is subsisting in respect of a Reliance Rail Group Company on the Subscription Funding Date and no Event of Default is subsisting on the Subscription Funding Date which is likely to give rise to a future Insolvency Event of a Reliance Rail Group Company.</p>	State
<p>(f) (Restructure Agreements) The Restructure Agreements remain in full force and effect at the Subscription Funding Date (except to the extent they expire or terminate in accordance with their terms).</p>	State

3.2 Reasonable endeavours to satisfy Conditions

- (a) Subject to clause 3.2(b), the Reliance Rail Group Companies party to this deed must use all best endeavours to ensure that each Condition is satisfied on or before the Subscription Funding Date and must otherwise co-operate with, and comply with all reasonable requests of, the State for the purposes of procuring the satisfaction of any Condition.
- (b) It is acknowledged by each of the parties that the requirement of the Reliance Rail Group Companies under clause 3.2(a) to use all best endeavours does not oblige any of them to act to their commercial detriment or substantially beyond the restructuring contained in and envisaged by the Restructure Agreements.

3.3 Anticipated failure to satisfy Conditions

- (a) The Reliance Rail Group Companies party to this deed must keep the State informed of any fact, matter or circumstance of which it becomes aware that may result in a Condition not being satisfied in accordance with its terms.
- (b) If the Reliance Rail Group Companies party to this deed form the view (acting reasonably) 12 months prior to the anticipated Subscription Funding Date that any

of the Conditions will not be satisfied by the Subscription Funding Date in accordance with their terms, the Reliance Rail Group Companies may enter into discussions with the State (which the State agrees to engage in) as to whether this deed will be terminated or the State will waive any of the Conditions and if so, on what terms.

3.4 Waiver of Conditions

The State may waive a Condition in its absolute discretion by giving notice in writing to the Reliance Rail Group Companies.

3.5 Failure of Conditions

- (a) A party may terminate this deed by notice to the other parties if any Condition has not been satisfied or waived in accordance with clause 3.4 by [REDACTED] (or such later date as agreed between the parties) except where the relevant Condition has not been satisfied as a direct result of a failure by the party seeking to terminate to comply with its obligations under clause 3.2.
- (b) The State may terminate this deed by notice to each other party to this deed at any time before Subscription Completion if Condition 3.1(b) (*Senior Bank Debt funded*) or Condition 3.1(f) (*Restructure Agreements*) has become incapable of satisfaction and that Condition has not been waived in accordance with clause 3.4 within 60 Business Days (**Waiver Period**) after the occurrence of the fact, matter or circumstance which caused that Condition to become incapable of satisfaction provided that this termination right may only be exercised by the State within 60 Business Days after the end of the Waiver Period or that termination right is otherwise irrevocably waived in respect of the fact, matter or circumstance that gave rise to the termination right.

3.6 Notice in relation to satisfaction or waiver of Conditions

As soon as the State is satisfied that the Conditions have been, or will on any Refinancing (as defined in the Project Contract) be, satisfied or waived by the State in accordance with clause 3.4, the State must:

- (a) give notice to each of the parties confirming that each of the Conditions have been either satisfied or waived by the State in accordance with clause 3.4 and that Subscription Completion will take place on the date determined under clause 6.1;
- (b) provide to Rail Corporation New South Wales the notice referred to in clause 2.2(b) of the RailCorp Consent Deed; and
- (c) provide to each of the parties a copy of the notice referred to in clause 3.6(b).

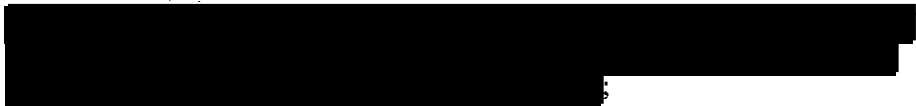
4. Top-up funding

4.1 Right to procure top-up funding

Subject to clause 4.2 and complying with any requirements under the Debt Financing Documents, [REDACTED] that the Condition specified in clause 3.1(d) (*Acceptable refinance achievable*) will not be satisfied by [REDACTED] without the provision of additional funds, the Reliance Rail Group Companies may procure that any Creditor or other party (**Contributor**) provide additional funds to the Reliance Rail Group for the purpose of facilitating that the Condition in clause 3.1(d) is satisfied in accordance with its terms (**Top-Up Amount**).

4.2 Terms of Top-Up Amount

Subject to complying with any requirements under the Debt Financing Documents, the Top-Up Amount must be provided on the following terms:

- (a) the Top-Up Amount must not rank ahead of the Subscription Securities in priority of payment or the Stapled Securities to be purchased by the State in accordance with the Existing Investors Side Deed;
- (b) the Contributor will not, as a result of providing the Top-Up Amount, be entitled to be issued any Stapled Securities (or to acquire any other equity or security in the Reliance Rail Group Companies) which would dilute the Subscription Securities or the Stapled Securities to be purchased by the State in accordance with the Existing Investors Side Deed;
- (c) 
- (d) the Top-Up Amount must only be used by the Obligor to repay the Senior Debt in order to enable the Condition in clause 3.1(d) to be satisfied;
- (e) following the provision of the Top-Up Amount, the Condition in clause 3.1(d) will be capable of being satisfied;
- (f) the Top-Up Amount must be paid to the Reliance Rail Group Companies prior to Subscription Completion;
- (g) if the Condition in clause 3.1(d) is satisfied, the Top-Up Amount must be reimbursed by the State in accordance with and subject to clause 4.4; and
- (h) the terms of the Top-Up Amount must otherwise be on terms acceptable to the State, acting reasonably.

4.3 State not entitled to withhold payment of Subscription Amount

In the event that any Top-Up Amount is provided (and that Top-Up Amount is sufficient to enable the Condition in clause 3.1(d) to be satisfied), the State shall not be entitled to withhold payment of the Subscription Amount on the basis that the Condition in clause 3.1(d) has not been satisfied.

4.4 Re-imbursement of Top-Up Amount

- (a) If:
 - (i) the Contributor provides the Top-Up Amount to the Reliance Rail Group;
 - (ii) the terms of the Top-Up Amount comply with clause 4.2; and
 - (iii) a Trigger Event occurs and the Profit Amount is a positive number,the State must, subject to clause 4.4(b), re-imburse the Contributor out of the Profit Amount following the occurrence of the Trigger Event for an amount of the Top-Up Amount equal to:

- (iv) in respect of the first occurrence of a Trigger Event, the lesser of [REDACTED] and the Top-Up Amount (**Capped Reimbursement Amount**); and
 - (v) if more than one Trigger Event occurs and the State has made a payment to the Contributor in accordance with this clause 4.4, the amount equal to the Capped Reimbursement Amount less the amount of any payment to the Contributor in accordance with this clause 4.4.
- (b) Notwithstanding clause 4.4(a), if the Profit Amount following the occurrence of a Trigger Event is less than the Capped Reimbursement Amount, the State is only obliged to re-imburse the Contributor for the amount equal to the relevant Profit Amount.
 - (c) For the avoidance of doubt, if the Profit Amount is a negative number, the State is not obliged to re-imburse the Contributor for the Top-Up Amount.

5. Subscription for B Class Notes (Holding)

5.1 Subscription and issue

Subject to clause 3.1, on Subscription Completion, the State must subscribe for and the Holding Company must issue the Subscription Securities for the Subscription Amount in accordance with the terms of this deed.

5.2 Issue terms

The terms and conditions of the Subscription Securities are set out in the Deed Poll (Holding) and the State and the Holding Company agree to be bound by the Deed Poll (Holding).

5.3 Application

Subject to clause 3.1, the execution of this deed by the State constitutes an application by the State for the allotment by the Holding Company of the Subscription Securities to the State for the Subscription Amount on the Subscription Funding Date, on and subject to the provisions of the Deed Poll (Holding) and this deed.

6. Subscription Completion

6.1 Time and place

Subscription Completion must take place on the Subscription Funding Date at a time to be agreed between the parties at the address of the Holding Company or at any other date, time or place that the State and the Holding Company agree in writing.

6.2 Subscription Completion

At Subscription Completion:

- (a) the State must pay or procure the payment of the Subscription Amount to the Holding Company; and
- (b) the Holding Company must:
 - (i) issue and allot the Subscription Securities to the State;

- (ii) enter the name of the State in the register of noteholders of the Holding Trust as the holder of the Subscription Securities;
- (iii) deliver to the State a duly executed note certificate showing that the State is the holder of the Subscription Securities; and
- (iv) take all other necessary steps to constitute and evidence that the State is the holder of the Subscription Securities (including under this deed and the Deed Poll (Holding)).

6.3 Application of funds by the Holding Company

The Holding Company (as trustee of the Holding Trust) must apply the Subscription Amount received by it under clause 6.2 in the subscription by the Holding Company (as trustee of the Holding Trust) for a number of B Class Notes (Operating) equal to the number of Subscription Securities issued under clause 6.2 and must comply with the terms of the Debt Financing Documents including clause 4.11(c) of the Project Bank Account Undertakings.

6.4 Subscription by Holding Company

Upon receipt of the amounts from the Holding Company (as trustee of the Holding Trust) in accordance with clause 6.3, the Operating Company (as trustee of the Operating Trust) must:

- (a) enter the name of the Holding Company (as trustee of the Holding Trust) in the register of noteholders of the Operating Trust as the holder of the relevant B Class Notes (Operating);
- (b) deliver to the Holding Company (as trustee of the Holding Trust) a duly executed note certificate showing that the Holding Company (as trustee of the Holding Trust) is the holder of the relevant B Class Notes (Operating); and
- (c) take all other necessary steps to constitute and evidence that the Holding Company (as trustee of the Holding Trust) is the holder of the relevant B Class Notes (Operating) (including under this deed and the Deed Poll (Operating)).

6.5 Application of funds by the Operating Company

Subject to complying with the Project Bank Account Undertakings, the Operating Company (as trustee of the Operating Trust) must apply the amounts received from the Holding Company (as trustee of the Holding Trust) in accordance with clause 6.3 to repay the Facilitation Loans in accordance with the Facilitation Loan Agreement and may not apply those amounts for any other purpose.

6.6 Application of funds by the Finance Company

Subject to complying with the Project Bank Account Undertakings, the Finance Company must apply the amounts received from the Operating Company (as trustee of the Operating Trust) in accordance with clause 6.5 to repay Senior Debt and may not apply those amounts for any other purpose.

6.7 New constitutions

On the Subscription Funding Date, subject to any necessary consents of the Creditors under the Debt Financing Documents being obtained after the Restructure Effective Time:

- (a) the Equity Security Holders are required (under clause 7.2 of the Existing Investors Side Deed) to pass a Special Resolution as shareholders of the Holding Company

(but only in respect of the constitution for the Holding Company referred to in paragraph (i)) and a Unitholders Super Majority Decision as unit holders of the Holding Trust to adopt, with effect on and from Subscription Completion:

- (i) a new constitution for the Holding Company in the form provided by the State to Equity Security Holders 10 Business Days prior to the Subscription Funding Date;
 - (ii) the new constitution for the Operating Company referred to in clause 6.7(b); and
 - (iii) the new constitution for the Finance Company referred to clause 6.7(c);
- (b) provided that the Equity Security Holders have passed the resolutions referred to in clause 6.7(a), the Holding Company must pass a Special Resolution as the sole shareholder of the Operating Company to adopt, with effect on and from Subscription Completion, a new constitution for the Operating Company in the form provided by the State to the Holding Company 10 Business Days prior to the Subscription Funding Date; and
- (c) provided that the Equity Security Holders have passed the resolutions referred to in clause 6.7(a), the Operating Company must pass a Special Resolution as the sole shareholder of the Finance Company to adopt, with effect on and from Subscription Completion, a new constitution for the Finance Company in the form provided by the State to the Operating Company 10 Business Days prior to the Subscription Funding Date.

6.8 Amendment to Trust Deeds

On the Subscription Funding Date, subject to any necessary consents of the Creditors under the Debt Financing Documents being obtained after the Restructure Effective Time:

- (a) the Equity Security Holders are required (under clause 7.2 of the Existing Investors Side Deed) to pass a Unitholders Super Majority Decision as unit holders of the Holding Trust to approve the amendments of the Trust Deed (Holding) and Trust Deed (Operating) referred to in clauses 6.8(b) and 6.8(c);
- (b) provided that the Equity Security Holders have passed the resolutions referred to in clause 6.8(a), the Holding Company must enter into a supplemental deed poll to amend, with effect on and from Subscription Completion, the Trust Deed (Holding) in the form provided by the State to the Holding Company 10 Business Days prior to the Subscription Funding Date; and
- (c) provided that the Equity Security Holders have passed the resolutions referred to in clause 6.8(a), the Operating Company must enter into a supplemental deed poll to amend, with effect on and from Subscription Completion, the Trust Deed (Operating) in the form provided by the State to the Operating Company 10 Business Days prior to the Subscription Funding Date.

6.9 Sale and purchase under the Existing Investors Side Deed

- (a) Subject to the State performing its obligations under clause 4.3 of the Existing Investors Side Deed, at Equity Security Completion, the Holding Company must:
 - (i) enter the name of the State in the register of members of the Holding Company (in its own right) and the register of unitholders of the Holding

Trust as the holder of the Equity Securities purchased by the State in accordance with the Existing Investors Side Deed;

- (ii) deliver to the State a duly executed Share certificate and Unit certificate showing that the State is the holder of the Equity Securities purchased by the State in accordance with the Existing Investors Side Deed; and
 - (iii) take all other necessary steps to constitute and evidence that the State is the holder of the relevant Equity Securities (including under the Constitution (Holding), the Trust Deed (Holding) and the Corporations Act).
- (b) Subject to the State performing its obligations under clause 5.3 of the Existing Investors Side Deed, at Note Completion, the Holding Company must:
- (i) enter the name of the State in the register of noteholders of the Holding Trust as the holder of the Notes purchased by the State in accordance with the Existing Investors Side Deed;
 - (ii) deliver to the State a duly executed note certificate showing that the State is the holder of the Notes purchased by the State in accordance with the Existing Investors Side Deed; and
 - (iii) take all other necessary steps to constitute and evidence that the State is the holder of the relevant Notes (including under the Deed Poll (Holding)).

6.10 Entry in relevant register

If the Holding Company (in its own right and as trustee of the Holding Trust) does not perform its obligations under clauses 6.2(b)(ii), 6.9(a)(i) and 6.9(b)(i) on the date of Subscription Completion, the entry of the State in the register of members of the Holding Company (in its own right), the register of unitholders of the Holding Trust or the register of noteholders of the Holding Trust (as applicable) will be deemed to have been made by the Holding Company (in its own right and as trustee of the Holding Trust) on the date of Subscription Completion.

6.11 Interdependence of obligations

- (a) The obligations of the parties under clauses 6.2 to 6.9 of this deed and the obligations of the relevant parties under clauses 4.3 and 5.3 of the Existing Investors Side Deed are interdependent and must be performed as nearly as possible, simultaneously (to the extent this is within the control of the parties).
- (b) If:
 - (i) any obligation specified in clauses 6.2 to 6.9 of this deed is not performed on or before the date of Subscription Completion; or
 - (ii) any obligation specified in clauses 4.3 and 5.3 of the Existing Investors Side Deed is not performed on or before the date of Equity Securities Completion or the date of Note Completion (as the case may be),

then, without limiting any other rights of the parties, completion of the subscription and issue of the Subscription Securities is taken not to have occurred and any document delivered, or payment made, under clauses 6.2 to 6.9 must promptly (and

in any event by no later than 2 Business Days) be returned to the party that delivered it or paid it.

6.12 Title and risk

Subject to clause 6.11, legal and beneficial ownership of and risk in the Subscription Securities will pass to the State free from any Encumbrance on performance of the parties' obligations under clause 6.2 to 6.9.

7. Waivers

Each Reliance Rail Group Company hereby waives compliance with:

- (a) clause 11 of the Unitholders Agreement in respect of the issue of B Class Notes (Holding) to the State in accordance with clauses 5 and 6 of this deed; and
- (b) clause 12 of the Unitholders Agreement in respect of the transfer of Equity Securities and Notes to the State in accordance with clauses 4 and 5 of the Existing Investors Side Deed.

8. Conduct pending subscription

8.1 No distributions or redemptions

During the Effective Period, the Holding Company must not:

- (a) pay any interest on the Notes (irrespective of the rights set in clause 3.2 of Schedule 1 of the Deed Poll (Holding));
- (b) redeem any Notes (other than in accordance with clause 4.2 of Schedule 1 of the Deed Poll (Holding));
- (c) declare or otherwise determine to pay, or pay any dividend on any Shares; or
- (d) buy-back, cancel, redeem, or acquire for consideration any Stapled Securities (other than in accordance with clause 4.2 of Schedule 1 of the Deed Poll (Holding)),

provided that, for the avoidance of doubt, none of the above restrictions shall operate to prevent the Obligors from paying Facilitation Fees or Commitment Fees in accordance with the Restructure Agreements.

8.2 Equity Distribution Account

The Operating Company agrees that any cash paid into, or otherwise standing to the credit of, the Equity Distribution Account during the Effective Period pursuant to clause 5.1 (*Equity Distribution Account*) of schedule 8 of the Common Terms Deed, or otherwise, shall be retained in the Equity Distribution Account until the date on which the First Refinanced Debt is refinanced subject to the application or payment of such amounts in accordance with clause 3.1 of the Deed of Amendment (Unitholders Agreement).

8.3 Matters requiring the State's consent

During the Effective Period, each Reliance Rail Group Company must not:

- (a) undertake any of the matters listed in Schedule 3 of the Unitholders Agreement other than to give effect to a matter contemplated in a Restructure Agreement; and

- (b) amend, vary, terminate or waive any rights in respect of clause 3 of the Deed of Amendment (Unitholders Agreement),

without the prior written consent of the State.

8.4 Factors to be considered

- (a) If a matter requires the State's consent under clause 8.3 and the matter is likely to adversely affect the rights of the State under this deed or the State's interest as a potential future holder of Stapled Securities, the State may provide or withhold its consent in its absolute discretion.
- (b) If a matter requires the State's consent under clause 8.3 and the matter does not affect the State as contemplated by clause 8.4(a), the State may not unreasonably withhold its consent.
- (c) If the State is requested to provide a consent under clause 8.3, the State must provide or decline to provide its consent within 10 Business Days of the State receiving the request, except in the case where the matter must be approved by the New South Wales Cabinet prior to the State providing or declining its consent, in which case, the State must provide or decline to provide its consent within the period agreed by the parties.

8.5 Information

During the Effective Period, each Reliance Rail Group Company must provide to the State copies of all financial and operational reports, business plans and other documents which it provides to either Equity Security Holders, Note Holders or Creditors.

8.6 Accession Deed

The Holding Company may only register a person, other than an Equity Security Holder or Note Holder, as a holder of any Stapled Securities if that person executes, and delivers to the State, an Accession Deed in accordance with clause 8.5 of the Equity Investors Side Deed.

9. Equity Upside

If an Independent Valuer is appointed under clause 9.3 of the Existing Investors Side Deed, the Reliance Rail Group Companies must provide the Independent Valuer with any information and assistance reasonably required by the Independent Valuer to make its valuation including, in the case of the Operating Company, access to the officers and senior employees of the Operating Company.

10. Fees

10.1 Commitment Fee

Subject to clause 10.2, if a Financial Guarantor Default occurs, the Obligors will, in accordance with the directions received under the Unitholders Agreement, pay an amount to the State within 5 Business Days of, in the case of the first such payment, the date on which the Financial Guarantor Default occurs and, in the case of each subsequent payment, the last day of each Quarter in advance up to the last day of the Effective Period, calculated in accordance with the following formula (the **Commitment Fee**):

$$\text{Commitment Fee} = \frac{\text{Interest Rate} \times \text{SA} \times \text{N}}{365}$$

where:

Interest Rate is:

(a)

and

(b)

SA is the Subscription Amount; and

N means:

- (a) in respect of the Quarter during which the Financial Guarantor Default occurs, the number of days from (and including) the date of the Financial Guarantor Default to (but excluding) the last day of that Quarter;
- (b) subject to paragraph (c) below, for each subsequent Quarter, the number of days from (and including) the first day of that Quarter to (but excluding) the last day of that Quarter; and
- (c) in respect of the Quarter during which the Subscription Funding Date occurs, the number of days from (and including) the first day of that Quarter to (but excluding) the Subscription Funding Date.

10.2 Payments subject to available cash flow

- (a) The Obligors are not obliged to pay the Commitment Fee (or any interest accrued on any Unpaid Sum) if there are insufficient funds in the Equity Distribution Account on:
 - (i) in the case of the first payment of the Commitment Fee which would be due were it not for this clause 10.2, the date on which the Financial Guarantor Default occurs; and
 - (ii) in the case of each subsequent payment of the Commitment Fee which would be due were it not for this clause 10.2, the last day of the Quarter preceding the Quarter to which the payment relates.
- (b) The Obligors shall not be in breach of this agreement if they do not make a payment of the Commitment Fee (or any interest accrued on any Unpaid Sum) due to the operation of clause 10.2(a) but those amounts remain due and payable and, subject to the provisions of clause 10.2(a), shall be paid on the next payment date subject to the continued operation of clause 10.2(a) on that next payment date.

10.3 Consequence of non-payment of Commitment Fee

- (a) If the Commitment Fee is not paid to the State on the due date for payment under clause 10.1 due to the operation of clause 10.2(a), interest will accrue on all Unpaid Sums from day to day from the due date up to the date of actual payment at 8% per annum.

- (b) Subject to clause 10.2, any interest accruing under clause 10.3(a) will be payable by the Obligors on the last day of the Quarter following the Quarter on which the Commitment Fee was not paid due to the operation of clause 10.2(a).
- (c) Any interest accruing under clause 10.3(a) (if unpaid) will be compounded with that Unpaid Sum at the end of each Quarter applicable to that Unpaid Sum.

10.4 Calculation of Commitment Fee

- (a) The State will calculate the amount of any Commitment Fee (or any interest accrued on any Unpaid Sum) that is payable in accordance with this clause 10 and will notify the Obligors of the amounts not later than 10 Business Days prior to the due date for payment.
- (b) Any calculations made by the State in accordance clause 10.4(a) will be final and binding on the parties in the absence of manifest error.

11. Assignment and novation

11.1 Permitted assignment without consent

- (a) At any time during the period commencing on the Restructure Effective Time and ending on the Subscription Funding Date, the State may assign or otherwise transfer (in whole or in part and in one transfer or many) its rights or obligations under this deed to a Permitted Transferee without the consent of any other party, subject to:
 - (i) the State complying with its obligations under clause 11.2; and
 - (ii) the execution by the State and the Permitted Transferee of a Deed of Novation on the terms of clauses 11.3 to 11.5.
- (b) At any time after [REDACTED], the State or a Permitted Transferee may assign or otherwise transfer (in whole or in part and in one transfer or many) its rights or obligations under this deed to a third party without the consent of any other party, except in the case where the proposed transferee is a Direct Competitor of [REDACTED] at the time of transfer (in which case the prior consent of each other party must be obtained), subject to:
 - (i) the State complying with its obligations under clause 11.2; and
 - (ii) the execution by the State (or a Permitted Transferee) and the relevant transferee of a Deed of Novation on the terms of clauses 11.3 to 11.5.

11.2 Guarantee of Subscription Amount

If the State or a Permitted Transferee proposes to assign or otherwise transfer any of its rights or obligations under this deed in accordance with clause 11.1(a) or clause 11.1(b), the State must, on or prior to the date of assignment or transfer of its rights or obligations, deliver to the Holding Company a legally binding guarantee by the State of the obligations of the transferee under the Restructure Agreements (including payment of the Subscription Amount in accordance with clause 6.2) on terms to be agreed by (in each case acting reasonably) the State and the Holding Company. The State acknowledges that, under the Reliance Rail Undertakings Deed, the terms of the guarantee must be approved by the Intercreditor Agent.

11.3 Novation

If the State proposes to assign or otherwise transfer any of its rights or obligations under this deed in accordance with clause 11.1(a) or clause 11.1(b), the State or Permitted Transferee must procure that the transferee enters into the Deed of Novation under this deed.

11.4 Holding Company's obligations

On receipt by the Holding Company (in its own right and as trustee of the Holding Trust) of the Deed of Novation duly executed by the transferor and the transferee, the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust) and the Finance Company must, if the other conditions of this clause 11 have been satisfied, each countersign and deliver a counterpart (or counterparts) of the Deed of Novation to the transferor and the transferee.

11.5 Effect of novation

On and with effect from the date that the Deed of Novation becomes binding (**Substitution Date**), the parties agree and acknowledge that, subject to the Deed of Novation:

- (a) the State as transferor under the Deed of Novation ceases to be entitled to and bound by its rights and obligations under this deed with effect from and including the Substitution Date, but remains entitled to and bound by the rights and obligations which accrue up to the Substitution Date;
- (b) the transferee under the Deed of Novation and each other party assume obligations towards each other and acquire rights against each other which are identical to the rights and obligations which cease under clause 11.5(a);
- (c) the transferee under the Deed of Novation is entitled to the benefit of this deed; and
- (d) the transferee under the Deed of Novation is entitled to enforce its rights under this deed after the Substitution Date notwithstanding that it was not a party to the deed previously.

11.6 No other assignment without consent

Except as permitted under clause 11.1(a) or clause 11.1(b), a party cannot assign or otherwise transfer any of its rights or obligations under this deed to a third party without the prior consent of all parties to this deed.

12. Payments

12.1 Direction

Any reference in this deed to a payment to any party includes payment to another person at the direction of that party other than any payment by the State to the Holding Company pursuant to clause 6.2 of this deed.

12.2 Method of payment

Payment of any amount due under this deed by any party must be made by the paying party to the recipient party by:

- (a) electronic funds transfer in immediately available funds to an account with an Australian bank specified in writing by the recipient party to the paying party; or

(b) otherwise, in immediately available funds,
in each case, on or before the due date for payment.

12.3 No deduction

Any payment to be made under this deed must be made free and clear of any deduction or withholding, except where that deduction or withholding is required or compelled by law.

13. Representations, warranties and acknowledgements

13.1 By each party generally

Each party represents and warrants to each other party, except as expressly provided for in this deed, each of the statements made in Part 1 of Schedule 2 is correct.

13.2 By each Trustee Party

Each Trustee Party represents and warrants to each other party that, except as expressly provided for in this deed, each of the statements made in Part 2 of Schedule 2 is correct.

13.3 Specific warranties by the Reliance Rail Group Companies

Each Reliance Rail Group Company represents and warrants to each other party immediately prior to the Subscription Funding Date that, except as expressly provided for in this deed, no Insolvency Event is subsisting in respect of a Reliance Rail Group Company at that time.

13.4 Reliance on representations and warranties

Each party acknowledges that each other party has entered the Restructure Agreements to which it is a party in reliance on the representations and warranties in this clause 13 and Schedule 2.

13.5 When representations made and warranties given

- (a) Subject to clause 13.5(b), each of the representations and warranties given under this clause 13 is given as at the date of this deed and as at the time immediately prior to the Subscription Funding Date, in each case on the basis of the facts and circumstances prevailing at that time.
- (b) Notwithstanding 13.5(a):
 - (i) the statement in paragraph (d) of Part 1 of Schedule 2 is only given by each Reliance Rail Group Company as at the date of this deed; and
 - (ii) the warranty in clause 13.3 is only given by each Reliance Rail Group Company at the time immediately prior to the Subscription Funding Date.

14. Termination

14.1 Termination for failure to satisfy Conditions

This deed may be terminated in accordance with clause 3.5.

14.2 Effect of termination

If this deed is terminated then:

- (a) the provisions of this deed will cease to have effect except for the provisions of this clause 14, clauses 1, 15, 16, and 17 any other clause which is expressed to survive termination of this deed; and
- (b) each party retains the rights it has against the others in respect of any breach of this deed occurring before termination.

15. GST

15.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 15 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.

15.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed or any other Restructure Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

15.3 GST payable

If GST is payable in relation to a supply made under or in connection with this deed or any other Restructure Agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply or, if later, within 5 Business Days of the Supplier providing a valid tax invoice to the Recipient.

15.4 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this deed or any other Restructure Agreement varies from the additional amount paid by the Recipient under clause 15.3 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any ruling, advice, document or other information received by the Supplier from the Australian Taxation Office in relation to any supply made under this deed or any other Restructure Agreement will be conclusive as to the GST payable in relation to that supply. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 15.3.

16. Notices

16.1 How notice to be given

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

- (a) may be given by personal service, post or facsimile;
- (b) must be in writing;
- (c) must be addressed to each party as follows:

State

Attention: NSW Treasury, Senior Director, Commercial Finance Branch
Address: Level 26, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Fax: +61 2 9228 5748

Holding Company

Attention: Company Secretary
Address: Suite 2, Level 9, 333 George Street, Sydney NSW 2000
Fax: +61 2 9251 4845

Operating Company

Attention: Company Secretary
Address: Suite 2, Level 9, 333 George Street, Sydney NSW 2000
Fax: +61 2 9251 4845

Finance Company

Attention: Company Secretary
Address: Suite 2, Level 9, 333 George Street, Sydney NSW 2000
Fax: +61 2 9251 4845

- (d) 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; and
- (e) must be delivered by hand or posted by prepaid post to the address or sent by fax to the number of the addressee in accordance with clause 16.1(b).

16.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (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 fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

17. General

17.1 Amendments

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

17.2 Consents

Unless this deed expressly provides otherwise, a consent under this deed may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

17.3 Costs

Except as otherwise provided in the Restructure Co-Ordination Deed, each party must pay its own costs and expenses in connection with:

- (a) negotiating, preparing, executing and performing each Restructure Agreement; and
- (b) any subsequent consent, agreement, approval, waiver or amendment relating to any Restructure Agreement.

17.4 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, and all together constitute one agreement.

17.5 Further acts and documents

Each party must promptly do, and procure that its employees and agents promptly do, all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

17.6 No merger

A party's rights and obligations do not merge on completion of any transaction under this deed.

17.7 Severance

If any provision or part of a provision of this deed is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

17.8 Waivers

Without limiting any other provision of this deed, the parties agree that:

- (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 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; and
- (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.

17.9 Governing law and jurisdiction

This deed is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 17.9.

Schedule 1 Security holders

Part A - Equity Security Holders

Name	Address	Defined Term
IEF Reliance Rail Pty Limited ACN 122 695 970	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - IEF Co
GIF Reliance Rail Pty Limited ACN 122 696 002	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - GIF Co
REST Reliance Rail Pty Limited ACN 122 695 934	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - REST Co
Downer PPP Investments Pty Ltd ACN 122 730 152	Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113	DOW Co
International Public Partnerships GP Limited acting in its capacity as general partner of International Public Partnerships L.P.	Two London Bridge London SE1 9RA United Kingdom	IPP
RBS Rail Holdings (Australia) Pty Ltd ACN 120 875 765	Level 5, RBS Tower, 88 Phillip Street, Sydney NSW 2000	RBS Co

Part B - Note Holders

Name	Address	Defined Term
AMP Investment Services Pty Limited ABN 71 063 986 989 as trustee of the AMP Capital Infrastructure Equity Fund	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - IEF
AMP Investment Services Pty Limited ABN 71 063 986 989 as trustee of the AMP Capital Global Infrastructure Fund No. 2	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - GIF
AMP Capital Investors Limited ABN 59 001 777 591 as trustee of the REST Infrastructure Trust	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - REST
Downer EDI Limited ABN 97 003 872 848	Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113	Downer
International Public Partnerships GP Limited acting in its capacity as general partner of International Public	Two London Bridge London SE1 9RA United Kingdom	IPP

Partnerships L.P.		
RBS Funds Management (Australia) Limited ACN 120 541 988 as trustee of the RBS Rail Investment Trust	Level 5, RBS Tower, 88 Phillip Street, Sydney NSW 2000	RBS

Schedule 2 Mutual representations and warranties

1. Part 1: Mutual representations and warranties

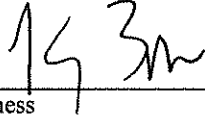
- (a) **(Status)** If the party is a corporation, it is a corporation properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation.
- (b) **(Power)** It has full legal capacity and power:
- (i) to own its property and to carry on its business; and
 - (ii) to enter into this deed and to carry out the transactions that it contemplates.
- (c) **(Corporate authority)** It has taken all action that is necessary or desirable to authorise its entry into this deed and its carrying out the transactions that it contemplates.
- (d) **(No insolvency of corporation)** If the party is a corporation, none of the following events has occurred in relation to that party:
- (i) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar officer is appointed in respect of that party;
 - (ii) an application has been made to court or a resolution has been passed or an order is made for the winding up or dissolution of that party;
 - (iii) that party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them (except, in the case of each Obligor, negotiations with its Creditors (or any of them) in relation to a restructure of any of its Debt or for the provision of additional funding); or
 - (iv) that party is declared or taken under any applicable law to be insolvent or that party's board of directors resolves that it is, or is likely to become at some future time, insolvent.
- (e) **(Documents effective)** This deed constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration.
- (f) **(No contravention)** Neither its execution of this deed nor the carrying out by it of the transactions that it contemplates, does or will:
- (i) contravene any law to which it or any of its property is subject or any order of any Governmental Agency that is binding on it or any of its property;
 - (ii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iii) if the party is a corporation, contravene its constitution (if any).

2. Part 2: Trustee party representations and warranties

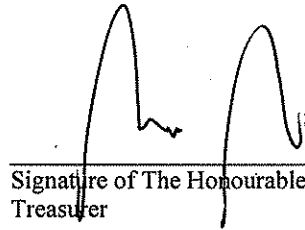
- (a) **(Only trustee)** The Trustee Party is the only trustee of the Relevant Trust.
- (b) **(No action to remove)** No action has been taken or proposed to remove the Trustee Party as trustee of the Relevant Trust.
- (c) **(Copy of Trust Deed)** A true copy of the trust deed of the Relevant Trust and other documents relating to the Relevant Trust have been provided to the Intercreditor Agent and disclose all the terms of the Relevant Trust.
- (d) **(Power)** The Trustee Party has power under the trust deed of the Relevant Trust to enter into and comply with its obligations under the Restructure Agreements to which it is a party.
- (e) **(Authorisations)** The Trustee Party has in full force and effect the authorisations necessary to enter into the Restructure Agreements to which it is a party, perform obligations under them and allow them to be enforced (including under the trust deed of the Relevant Trust and its constitution (if any)).
- (f) **(Right to be indemnified)** The Trustee Party has a right to be fully indemnified out of the applicable trust fund in respect of obligations incurred by it under the Restructure Agreements to which it is a party.
- (g) **(Trust Fund sufficient)** The applicable trust fund is sufficient to satisfy that right of indemnity and all other obligations in respect of which the Trustee Party has a right to be indemnified out of the trust fund.
- (h) **(No default)** The Trustee Party is not in default under the trust deed of the Relevant Trust.
- (i) **(No action to terminate)** No action has been taken or proposed to terminate the applicable Relevant Trust.
- (j) **(Compliance with obligations)** The Trustee Party and its directors and other officers have complied with their obligations in connection with the Relevant Trust.
- (k) **(Priority)** The rights of the Creditors, the Intercreditor Agent and the Security Trustee under the Restructure Agreements rank in priority to the interests of the beneficiaries of the Relevant Trust.
- (l) **(Purpose)** The Trustee Party has carefully considered the purpose of the applicable Restructure Agreements to which it is or is to be party and considers that entry into and performance of the applicable Restructure Agreements to which it is or is to be party is for the benefit of the beneficiaries of the Relevant Trust and the terms of the Restructure Agreements to which it is or is to be party are fair and reasonable.
- (m) **(Present entitlements)** The beneficiaries of the Relevant Trust are, and will remain, presently entitled to all of the distributable income of the Relevant Trust.

Executed as a deed.

Executed by **The Honourable Michael Baird MP, Treasurer** for and on behalf of the Crown in right of the State of New South Wales:



Signature of witness

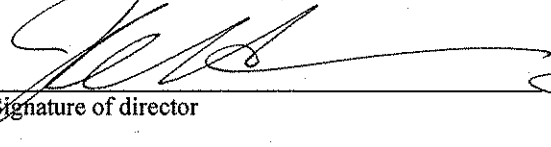


Signature of The Honourable Michael Baird MP, Treasurer

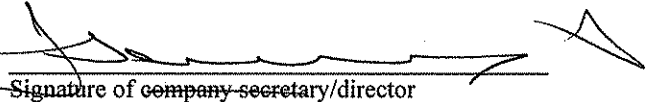
KLAY DAVID BROWN

Full name of witness

Executed by **Reliance Rail Holdings Pty Limited** in its own right and as trustee of the Reliance Rail Holding Trust in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director



Signature of company secretary/director

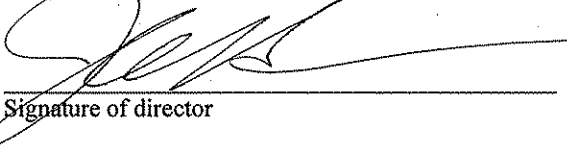
JOHN HARKNESS

Full name of director

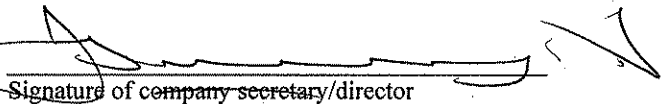
JOHN DAVEPORT

Full name of company secretary/director

Executed by **Reliance Rail Pty Limited** in its own right and as trustee of the Reliance Rail Trust in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director



Signature of company secretary/director

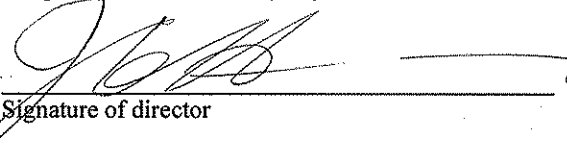
JOHN HARKNESS

Full name of director

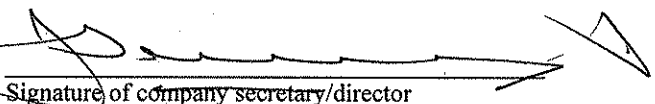
JOHN DAVEPORT

Full name of company secretary/director

Executed by **Reliance Rail Finance Pty Limited** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director



Signature of company secretary/director

JOHN HARKNESS

Full name of director

JOHN DAVEPORT

Full name of company secretary/director

Annexure A - Deed of Novation

DATE

PARTIES

Reliance Rail Holdings Pty Limited ACN 111 280 169 (Holding Company) of Suite 2, Level 9, 333 George Street, Sydney, New South Wales, 2000 in its own right and as trustee of the Reliance Rail Holding Trust (**Holding Trust**)

Reliance Rail Pty Limited ACN 111 280 427 (Operating Company) of Suite 2, Level 9, 333 George Street, Sydney, New South Wales, 2000 in its own right and as trustee of the Reliance Rail Trust (**Operating Trust**)

Reliance Rail Finance Pty Limited ACN 120 380 805 of Suite 2, Level 9, 333 George Street, Sydney, New South Wales, 2000 (**Finance Company**)

[insert details of transferee] (Transferee)

[insert details of transferor] (Transferor)

BACKGROUND

- A. The Transferor proposes to transfer its rights and obligations under the Capital Commitment Deed to the Transferee.
- B. In connection with such transfer, the Transferee accedes to the terms of the Capital Commitment Deed as if it were a party to it.

OPERATIVE PROVISIONS

1. Interpretation

1.1 Definitions

Unless expressly defined below, terms defined in the Capital Commitment Deed have the same meaning in this deed.

Capital Commitment Deed means the deed entitled "Capital Commitment Deed" dated on or about *[insert]* between the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust), the Finance Company and the State.

Continuing Parties means the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust) and the Finance Company.

Substitution Date means the date of this deed.

1.2 Interpretation

The same rules as to interpretation of the Capital Commitment Deed apply in respect of this deed.

2. Novation

2.1 Novation

With effect from the Substitution Date, the parties novate the Capital Commitment Deed so that:

- (a) to the extent applicable, the Transferee replaces the Transferor under the Capital Commitment Deed;
- (b) the Transferee has all the rights and obligations of the Transferor under the Capital Commitment Deed, other than rights and obligations that arise before the Substitution Date; and
- (c) the Transferee and the Continuing Parties are bound by and must comply with the Capital Commitment Deed,

as if the Transferee were an original party to the Capital Commitment Deed instead of (or in addition to) the Transferor.

2.2 No further rights and release from obligations

With effect from the Substitution Date, the Transferor:

- (a) has no further rights under the Capital Commitment Deed other than rights that arise before the Substitution Date; and
- (b) is released from all obligations and liabilities under the Capital Commitment Deed other than obligations and liabilities that arise before the Substitution Date.

2.3 Transferee confirmation

The Transferee confirms that:

- (a) it has received a copy of the Capital Commitment Deed and all other documents and information relevant to the transactions contemplated under this deed; and
- (b) it has not relied and will not rely on any other party to this deed in respect of the legal validity, effectiveness, adequacy, accuracy or completeness of any of those documents or that information.

3. Transferor details

For the purposes of the Capital Commitment Deed, the notice details of the Transferee are:

[name of Transferee]

Attention:

Address:

Facsimile:

4. Warranties and representations

4.1 By the Transferee

The Transferee represents and warrants to each other party that:

- (a) **(Status)** If the party is a corporation, it is a corporation properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation.
- (b) **(Power)** It has full legal capacity and power:
 - (i) to own its property and to carry on its business; and
 - (ii) to enter into this deed and to carry out the transactions that it contemplates.
- (c) **(Authority)** It has taken all action that is necessary or desirable to authorise its entry into this deed and its carrying out the transactions that it contemplates.
- (d) **(No insolvency of corporation)** If the party is a corporation, none of the following events has occurred in relation to that party:
 - (i) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar officer is appointed in respect of that party;
 - (ii) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of that party;
 - (iii) that party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or
 - (iv) that party is declared or taken under any applicable law to be insolvent or that party's board of directors resolves that it is, or is likely to become at some future time, insolvent.
- (e) **(Documents effective)** This deed constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration.
- (f) **(No contravention)** Neither its execution of this deed nor the carrying out by it of the transactions that it contemplates, does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Governmental Agency that is binding on it or any of its property;
 - (ii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iii) if the party is a corporation, contravene its constitution (if any).
- (g) **(Trust)** If the party is a trustee, that party represents and warrants to the other parties that:
 - (i) **(Power)** it has power to enter into, deliver and perform this deed in its capacity as trustee of the relevant trust and to carry out the transactions contemplated by this deed;
 - (ii) **(Trust validly created)** the relevant trust has been validly created and is in existence;

- (iii) **(Trustee validly appointed)** it has been validly appointed as trustee of the relevant trust and is the sole trustee of the relevant trust; and
- (iv) **(No action to remove)** no action has been taken or proposed to remove it as trustee of the relevant trust.

4.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated on the Substitution Date on the basis of the facts and circumstances as at that date.

5. Governing law and jurisdiction

This deed is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 6.