



**RailCorp**

## Debt Finance Side Deed

### Rail Corporation New South Wales

ABN 59 325 778 353

RailCorp

### Reliance Rail Pty Limited

as trustee for Reliance Rail Trust

ABN 18 111 280 427

PPP Co

### Reliance Rail Finance Pty Limited

ACN 120 380 805

PPP Co Finance Co

### Permanent Registry Limited

ACN 000 334 636

Security Trustee

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Our reference 130/604/80011438

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Debt Finance Side Deed made at Sydney on 3rd December 2006

- Parties**
- Rail Corporation New South Wales, ABN 59 325 778 353** of Level 6, 18 Lee Street, Chippendale, New South Wales ("**RailCorp**")
  - Reliance Rail Pty Limited, ABN 18 111 280 427** as trustee for Reliance Rail Trust of Level 6, 88 Philip Street, Sydney, New South Wales ("**PPP Co**")
  - Reliance Rail Finance Pty Limited, ACN 120 380 805** of Level 6, 88 Phillip Street, Sydney, New South Wales ("**PPP Co Finance Co**")
  - Permanent Registry Limited, ACN 000 334 636** of Level 4, 35 Clarence Street, Sydney, New South Wales ("**Security Trustee**")

## Background

- A. Under the Project Contract, RailCorp and PPP Co have agreed that PPP Co will, amongst other things:
  - (a) finance, design, manufacture or construct (as applicable) and commission, the Cars, the Simulators and the Maintenance Facility; and
  - (b) maintain and repair the Cars, the Simulators and the Maintenance Facility.
- B. Under the Debt Financing Documents, the Debt Financiers have agreed to provide finance to PPP Co Finance Co in respect of the Project.
- C. PPP Co has agreed to grant the Debt Financiers' Securities to the Security Trustee to secure the due performance of the obligations of PPP Co Finance Co, PPP Co and the other Obligor's under the Debt Financing Documents, and the RailCorp Security Providers have agreed to grant the RailCorp Securities to RailCorp to secure PPP Co's obligations to RailCorp under the RailCorp Project Agreements.
- D. The Security Trustee, RailCorp, PPP Co and PPP Co Finance Co wish to regulate the manner in which certain rights in respect of the Project are to be exercised.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Project Contract definitions

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

#### 1.2 Definitions

In this deed:

"**Common Terms Deed**" means the deed entitled "NSW Rolling Stock PPP Common Terms Deed" between the Security Trustee, PPP Co, PPP Co Finance Co and others.

"**Controller**" has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

"**Debt Financiers' Securities**" means:

- (a) the NSW Rolling Stock PPP - Global Deed of Security between the Security Trustee, PPP Co and others dated on or about the date of this deed;
- (b) the Mortgage of Lease; and
- (c) any Security Interest which secures performance of the same obligations as the foregoing.

**"Debt Financiers' Tripartite Deeds"** means each of the tripartite deeds dated on or about the date of this deed between the Security Trustee, PPP Co, a Core Contractor and a Core Contractor Guarantor.

**"Debt Proceeds Account"** has the meaning given to that term in the Debt Financing Documents.

**"Default Notice"** means each notice given by RailCorp under clause 5.1(a) or clause 5.1(b) of this deed.

**"Enforcement Action"** means:

- (a) any action or attempted action to enforce; or
- (b) any action in or towards exercising any right, power or remedy; or
- (c) any similar action; or
- (d) an appointment of an Enforcing Party to take any action described in paragraphs (a) to (c) above.

**"Enforcing Party"** means a beneficiary of a Security or any Controller, agent, attorney, trustee, receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed under any Security, and includes the Security Trustee if it carries out any Enforcement Action.

**"Finance Default"** means an event described as an "Event of Default" in the Debt Financing Documents.

**"Finance Party"** means the Security Trustee and each Senior Beneficiary under the Security Trust Deed.

**"General Construction Account"** has the meaning given to that term in the Debt Financing Documents.

**"Hedge Collateral"** has the meaning given in the Common Terms Deed.

**"Hedge Collateral Account"** has the meaning given in the Common Terms Deed.

**"Intercreditor Agent"** has the meaning given to that term in the Security Trust Deed.

**"Lease"** has the meaning given in the Right of Entry Deed.

**"Mortgage of Lease"** means the mortgage of lease to be granted by PPP Co in favour of the Security Trustee upon grant of the Maintenance Site Lease.

**"NSW Rolling Stock PPP Security Trust"** means the trust created under clause 2.1 of the Security Trust Deed.

**"NSW Rolling Stock PPP Security Trust Fund"** has the meaning given to that term in the Security Trust Deed.

**"Obligor"** has the meaning given to that term in the Security Trust Deed.

**"Option Deed"** means the deed entitled "Option Deed" between EDI Rail Pty Ltd (ABN 92 000 002 031) and PPP Co dated on or about the date of this document.

**"Project Contract"** means the agreement entitled "Rolling Stock PPP Project Contract (Double Deck Trains)" between RailCorp and PPP Co dated on or about the date of this deed.

**"RailCorp Priority Moneys"** means, at any time, any amounts then due and payable by PPP Co to RailCorp, and secured by the RailCorp Securities, under:

- (a) clause 34.5 (Damage to third party property) of the Project Contract;
- (b) clause 36.9 (Failure to provide proof of insurance) of the Project Contract; or
- (c) clause 48 (Step-in) of the Project Contract; or
- (d) clause 51.2 (if option to acquire Cars following termination is exercised) of the Project Contract,

but (in respect of paragraphs (c) and (d)) in the case of any RailCorp Remedy Costs, only to the extent that RailCorp is entitled to include such amounts in the RailCorp Priority Moneys under clause 19.

**"RailCorp Remedy Costs"** means without double counting costs and expenses of a capital nature that RailCorp:

- (a) incurs, or proposes to incur in relation to remedying any default by PPP Co under the RailCorp Project Agreements, in accordance with clause 48 of the Project Contract; or
- (b) is entitled to deduct in accordance with clause 51.2 of the Project Contract,

including, for the avoidance of doubt, costs incurred in completing Project Works relating to the Cars.

**"RailCorp Securities"** means:

- (a) the fixed and floating charge granted to RailCorp by PPP Co and PPP Co Finance Co pursuant to the RailCorp Deed of Charge; and
- (b) any Security Interest which secures performance of the same obligations as the RailCorp Deed of Charge.

**"RailCorp Security Provider"** means each of the parties (other than RailCorp) to the RailCorp Securities.

**"Remedy"** means to cure or remedy a breach, default or event, provided that if that breach, default or event is not capable of being cured in accordance with the applicable contract, Remedy includes taking steps reasonably acceptable to RailCorp to overcome the effects of a breach, default or event, to prevent the recurrence of the breach, default or event or otherwise making arrangements satisfactory to RailCorp (acting reasonably) including the replacement of a defaulting contractor, the assignment or novation of PPP Co's interests in the Project Agreements and/or the payment of reasonable compensation.

**"Right of Entry Deed"** means the deed entitled "Right of Entry Deed for Cardiff Maintenance Depot" between RailCorp, EDI Rail Pty Ltd (ABN 92 000 002 031) and PPP Co dated on or about the date of this document.

**"Securities"** means:

- (a) the RailCorp Securities; and
- (b) the Debt Financiers' Securities.

and **"Security"** means each or any one of them as the context requires.

**"Secured Beneficiaries"** has the meaning given to that term in the Security Trust Deed.

**"Step In Period"** means the period determined in accordance with clause 5.4(b)(i) and (ii).

### 1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (c) a reference to a party includes that party's executors, administrators, successors, and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
  - (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
  - (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
  - (h) 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;
  - (i) **"includes"** in any form is not a word of limitation;
  - (j) a reference to "\$" or "dollar" is to Australian currency; and
  - (k) a reference to an **"Enforcing Party"** is to an Enforcing Party in relation to the Security Trustee only and not in relation to RailCorp, unless specific reference is made to an Enforcing Party in relation to RailCorp.

#### **1.4 Replacement body interpretation**

Where a reference is made to any body or authority which ceases to exist ("**Former Body**"), that reference will be to that body or authority ("**Replacement Body**") which then serves substantially the same functions as the Former Body. Any reference to the president or other senior officer of the Former Body will be to the president or senior officer of the Replacement Body.

#### **1.5 No bias against drafting party**

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

#### **1.6 Business Day**

If the day on or by which any thing is to be done under this deed is not a Business Day, that thing must be done:

- (a) if it involves a payment under the Debt Financing Documents, other than a payment which is due on demand, on the preceding Business Day; and
- (b) in all other cases, no later than the next Business Day.

#### **1.7 Role of Security Trustee and limitation of liability**

This limitation of the Security Trustee's liability applies despite any other provisions of this deed and extends to all Security Trustee Obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed and to the extent of any inconsistency between the operation of this clause and any other provision of this deed, the terms of this clause will prevail.

- (a) The Security Trustee (when named in that capacity) enters into this deed as trustee of the NSW Rolling Stock PPP Security Trust and in no other capacity.
- (b) The parties other than the Security Trustee acknowledge that the Security Trustee incurs the Security Trustee Obligations solely in its capacity as trustee of the NSW Rolling Stock PPP Security Trust and that the Security Trustee will have no further Security Trustee Obligations under this deed if the Security Trustee ceases for any reason to be trustee of the NSW Rolling Stock PPP Security Trust.
- (c) Except in the case of and to the extent of fraud, negligence or wilful default on the part of the Security Trustee:
  - (i) the Security Trustee will not be liable to pay or satisfy any Security Trustee Obligations except out of the assets of the NSW Rolling Stock PPP Security Trust Fund against which it is actually indemnified in respect of any liability incurred by it as trustee of the NSW Rolling Stock PPP Security Trust;
  - (ii) the parties other than the Security Trustee may enforce their rights against the Security Trustee arising from non-performance of the Security Trustee Obligations only to the extent of the Security Trustee's right of indemnity out of the assets of the NSW Rolling Stock PPP Security Trust;



- (iii) if any party other than the Security Trustee does not recover all money owing to it arising from non-performance of the Security Trustee Obligations it may not seek to recover the shortfall by:
    - A. bringing proceedings against the Security Trustee in its personal capacity; or
    - B. applying to have the Security Trustee put into administration or wound up or applying to have a receiver or similar person appointed to the Security Trustee or proving in the administration or winding up of the Security Trustee;
  - (iv) the parties other than the Security Trustee waive their rights and release the Security Trustee from any personal liability whatsoever, in respect of any loss or damage:
    - A. which they may suffer as a result of any breach by the Security Trustee of any of its Security Trustee Obligations; or
    - B. which they may suffer as a result of non-performance by the Security Trustee of the Security Trustee Obligations; or
    - C. which cannot be paid or satisfied out of the NSW Rolling Stock Security Trust Fund of which the Security Trustee is entitled to be indemnified in respect of any liability incurred by it as trustee of the NSW Rolling Stock PPP Security Trust.
- (d) Parties other than the Security Trustee acknowledge that the whole of this document is subject to this role of the Security Trustee and limitation of liability clause and the Security Trustee shall in no circumstances be required to satisfy any liability of the Security Trustee arising under, or for non-performance or breach of any Security Trustee Obligations under or in respect of, this document or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than the assets of the NSW Rolling Stock Security Trust Fund under the Security Trustee's control and in its possession as and when they are available to the Security Trustee to be applied in exoneration for such liability PROVIDED THAT if the liability of the Security Trustee is not fully satisfied out of the assets of the NSW Rolling Stock Security Trust Fund as referred to in this clause, the Security Trustee will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability but only to the extent of the total amount, if any, by which the assets of the NSW Rolling Stock Security Trust Fund have been reduced by reasons of fraud, negligence or wilful default by the Security Trustee in the performance of the Security Trustee's duties as trustee of the NSW Rolling Stock Security Trust Fund.
- (e) The parties agree that no act or omission of the Security Trustee, (including any related failure to satisfy any Security Trustee Obligations) will constitute fraud, negligence or wilful default of the Security Trustee for the purposes of this role of the Security Trustee and limitation of liability clause to the extent to which the act or omission was caused or contributed to by any failure of an Obligor or any other person to fulfil its obligations relating to the NSW Rolling Stock Security Trust Fund.
- (f) No attorney, agent or other person appointed in accordance with this deed has authority to act on behalf of the Security Trustee in a way which exposes the Security Trustee to any personal liability, and no act or omission of such a person

will be considered fraud, negligence or wilful default of the Security Trustee for the purposes of this role of the Security Trustee and limitation of liability clause.

- (g) A failure by the Security Trustee to act due to lack of instructions or lack of proper (including timely) instructions from one or more of the Secured Beneficiaries required to be given under this deed does not amount to fraud, negligence or wilful default of the Security Trustee.
- (h) In this clause the "**Security Trustee Obligations**" means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Security Trustee under or in respect of this deed and terms used in this clause which are not defined in this deed have the meaning given in the Security Trust Deed and this clause:
  - (i) is paramount and applies regardless of any other provision of this deed or any other Project Agreement or any other instrument, even a provision which seeks to apply regardless of any other provision;
  - (ii) survives and inures beyond any termination of any Project Agreement for any reason; and

is not severable from this deed.

## **1.8 Inconsistencies**

To the extent of any inconsistency or conflict between the terms of this deed and any other RailCorp Project Agreement, this deed will prevail over the other RailCorp Project Agreement.

## **1.9 Project Agreements**

- (a) The Security Trustee acknowledges that it has received a copy of the Project Contract, the Rolling Stock Manufacture Contract Side Deed, the Rolling Stock TLS Contract Side Deed, the Maintenance Facility Construction Contract Side Deed and the Maintenance Facility Maintenance Contract Side Deed.
- (b) RailCorp acknowledges that it has received a copy of each of the Debt Financing Documents including the Debt Financiers' Securities and the Debt Financiers' Tripartite Deeds.

## **1.10 Role of PPP Co**

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

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## **2. Conditions precedent**

### **2.1 Conditions precedent**

The rights and obligations of the parties:

- (a) under this deed, are subject to Financial Close occurring; and
- (b) under clauses 5.3, 5.4, 5.5, 6, 7 and 9 of this deed, are subject to the satisfaction or waiver of the conditions precedent to first subscription under the Debt Financing Documents.

## **2.2 Confirmation by RailCorp**

At the request of the Security Trustee, RailCorp will confirm its satisfaction or waiver of the conditions precedent described in clause 2.1(a).

## **2.3 Confirmation by Security Trustee**

At the request of RailCorp, the Security Trustee will confirm its satisfaction or waiver of the conditions precedent described in clause 2.1(b).

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## **3. Consent to Securities**

### **3.1 Consent and acknowledgement by RailCorp**

RailCorp:

- (a) consents to the Debt Financiers' Securities;
- (b) acknowledges that the grant of the Debt Financiers' Securities is not in breach of the RailCorp Project Agreements;
- (c) acknowledges that the Debt Financiers are not subject to any duty or obligation under the RailCorp Project Agreements as a result of the Debt Financiers' Securities except as expressly set out in this deed; and
- (d) acknowledges and agrees that despite any provision of this deed and the RailCorp Securities (including paragraph (c) of the definition of Debt Financiers' Securities) any financial guarantees, letters of credit and the like given to the Security Trustee or any other Finance Party in connection with any money secured by the Debt Financiers' Securities, and any proceeds of them, are not the subject of the RailCorp Securities (and not charged thereunder) and not the subject of or regulated by this deed (including clause 4 of it) in any way whatsoever and may (but without limitation) be dealt with by (including making amendments to them) and applied by the Security Trustee and the Finance Parties in any way they see fit (and without notice to or any need for consent from RailCorp, including by PPP Co).

### **3.2 Consent by Security Trustee**

The Security Trustee consents to the RailCorp Securities.

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## **4. Order of priorities**

### **4.1 Priority of Securities**

The parties agree that the order of priority of the Debt Financiers' Securities and the RailCorp Securities (in respect of property subject to both) is, at any time:

- (a) first, the RailCorp Securities to the extent of any RailCorp Priority Moneys due and payable at that time;
- (b) secondly, the Debt Financiers' Securities for any amount secured by them at that time; and
- (c) thirdly, the RailCorp Securities for any amounts secured by them at that time, other than the RailCorp Priority Moneys at that time,

notwithstanding:

- (d) anything contained in the Debt Financiers' Securities or the RailCorp Securities;
- (e) the date or order of execution or registration of any of the Securities;
- (f) the order in which any moneys may be or may have been advanced or deemed to be or have been advanced or become or became payable or secured under the respective Securities;
- (g) the payment or repayment in whole or in part from time to time of the money secured by the Debt Financiers' Securities or the RailCorp Securities;
- (h) any fluctuation in the amount secured by the Debt Financiers' Securities or the RailCorp Securities from time to time;
- (i) the variation or release of any of the Securities or any obligation which is secured by any of the Securities;
- (j) any failure to enforce any of the Securities or any obligation which is secured by any of the Securities;
- (k) the respective dates on which anything is done or omitted to be done under or in relation to the Debt Financiers' Securities or the RailCorp Securities;
- (l) the moneys secured by the Debt Financiers' Securities or the RailCorp Securities being contingently payable or not due for payment; or
- (m) any rule of law or equity to the contrary.

#### **4.2 Application of payments on enforcement**

Subject to clause 4.3, the parties agree that any moneys received by RailCorp, or its Enforcing Parties on enforcement of the RailCorp Securities, or by the Security Trustee or any Enforcing Party on enforcement of a Debt Financiers' Security (to the extent it secures the same property as the RailCorp Securities), as the case may be, will be applied in the following order of priority:

- (a) first, *pari passu* towards the reasonable costs, charges and expenses of RailCorp, the Security Trustee or any Enforcing Party appointed under the RailCorp Securities or the Debt Financiers' Securities incurred in the enforcement of the RailCorp Securities or the Debt Financiers' Securities (as the case may be);
- (b) secondly, towards the remuneration of any such Enforcing Party;
- (c) thirdly, to RailCorp and the Security Trustee in accordance with the priorities set out in clause 4.1 (Priority of Securities); and
- (d) fourthly, any surplus amount is to be paid to an interest bearing account in the name of PPP Co with any bank nominated by PPP Co.

#### **4.3 Contingent liabilities**

If the RailCorp Securities or the Debt Financiers' Securities secure contingent liabilities to RailCorp or the Security Trustee then, until RailCorp or the Security Trustee is satisfied that the contingent liability has been extinguished, RailCorp or the Security Trustee may retain from the proceeds of a realisation of their respective security an amount, in an interest bearing account, consistent with the order and amount of priority established under clause 4.1 (Priority of Securities) which they reasonably estimate to be the amount of the contingent liability.

#### 4.4 Enforcement by RailCorp

- (a) **(No enforcement without consent):** RailCorp must not take any Enforcement Action under or in respect of the RailCorp Securities without the Security Trustee's consent, including by:
- (i) causing or permitting crystallisation of a floating charge in respect of the assets of PPP Co except where crystallisation occurs automatically pursuant to the RailCorp Securities;
  - (ii) execution, sale, or taking possession of property which is subject to the RailCorp Securities; or
  - (iii) the appointment of an Enforcing Party to the property (or any part of it) which is subject to the RailCorp Securities,

and must not petition for (or vote in favour of any resolution for) or initiate or support or take steps with a view to any insolvency, liquidation, reorganisation, administration, or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or the termination or dissolution of PPP Co.

- (b) **(Priority of enforcement action):** Any Enforcement Action under the Debt Financiers' Securities by the Security Trustee or an Enforcing Party appointed by a Finance Party will take precedence over any permitted Enforcement Action by RailCorp or an Enforcing Party appointed under the RailCorp Securities. If an Enforcing Party takes possession of any property under any of the Debt Financiers' Securities, that person may, immediately following a notice in writing to RailCorp, assume control from any Enforcing Party of that property appointed under the RailCorp Securities.
- (c) **(Status of RailCorp Securities):** Notwithstanding anything contained in the RailCorp Securities, until the payment of all moneys secured by the Debt Financiers' Securities, unless the Security Trustee otherwise consents in writing (such consent will not be unreasonably withheld):
- (i) subject to paragraph (ii), the RailCorp Securities will operate as, and remain operating as, a floating charge, which has not crystallised, and will not restrict the performance by PPP Co of its obligations under the Project Agreements; and
  - (ii) the RailCorp Securities will operate as a fixed charge over an asset (which is expressed to be subject to a fixed charge under the RailCorp Securities) only to the extent that such asset is also subject to a fixed charge under any of the Debt Financiers' Securities.
- (d) **(Hedge Collateral Account)** RailCorp acknowledges and agrees that, despite any RailCorp Project Agreement, any Hedge Collateral Account (as defined in the Common Terms Deed) established with PPP Co under the terms of any Debt Financing Document and any Hedge Collateral (as defined in the Common Terms Deed) is not available to RailCorp, is not charged under the RailCorp Securities, will not be deducted from any component of any Termination Payment determined under the Project Contract and must only be applied in accordance with the terms of the Debt Financing Document under which it was established.

## 4.5 No marshalling

The Security Trustee need not resort to any Security Interest it holds for the payment of amounts secured under a Debt Financiers' Security before the Security Trustee resorts to any other Security Interest it holds for the payment of the same amounts.

## 4.6 Registration and notice

RailCorp and the Security Trustee must co-operate with a view to reflecting the priority of the Debt Financiers' Securities and the RailCorp Securities set out in this deed in any register or with any filing or registration authority and in giving notice to insurers and debtors liable for obligations covered by the Debt Financiers' Securities and the RailCorp Securities.

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## 5. Project default

### 5.1 Copy of Default Notice

- (a) RailCorp agrees with the Security Trustee that it will give the Security Trustee a copy of any notice (each being a "**Default Notice**") given to PPP Co pursuant to clause 49.3(c) (Final Persistent Breaches Notice), 49.4(c) (Final Frequent Breaches Notice) or 49.6 (Default Notice) of the Project Contract at the same time as the notice is given to PPP Co.
- (b) RailCorp further agrees with the Security Trustee that it will give the Security Trustee a copy of any notice given to PPP Co pursuant to clauses 33.2(a) (Force Majeure Event), 34.5 (Damage to third party property), 36.9 (Failure to produce proof of insurance), 48 (Step-in), 49.1 (Unacceptable Availability Notice), 49.2 (Unacceptable Reliability Notice), 49.3(a) (Persistent Breach Notice), 49.4(a) (Frequent Breaches Notice), 50 (Termination) and 51 (Option to Acquire Cars following Termination) of the Project Contract at the same time as the notice is given to PPP Co.

### 5.2 Information to Security Trustee

Whilst PPP Co attempts to Remedy an event which caused a Default Notice to be issued:

- (a) PPP Co must keep the Security Trustee informed of all measures taken or intended to be taken by PPP Co with respect to the relevant event and/or to carry out the Remedy; and
- (b) RailCorp must, upon written request from the Security Trustee, provide to the Security Trustee copies of all material correspondence and documents issued by RailCorp to PPP Co relating to the relevant event.

### 5.3 Security Trustee's right to remedy

- (a) (**Security Trustee's right to remedy**): RailCorp acknowledges and agrees that the Security Trustee may take steps (or procure the taking of steps) to Remedy or attempt to Remedy any event, including one which caused a Default Notice to be issued, in accordance with this clause 5.3 and the Debt Financing Documents, in addition to PPP Co's rights to Remedy the relevant event under the Project Contract, and that it may exercise, or appoint an Enforcing Party to exercise, at any time, some or all of PPP Co's rights, and perform some or all of PPP Co's obligations, under or in connection with the Project Documents. Any Remedy of an event, including one which caused a Default Notice to be issued effected by the Security Trustee or an Enforcing Party will (as between PPP Co and RailCorp) be effective

as a Remedy of the relevant event to the same extent as if it had been done or effected by PPP Co.

- (b) **(Provision of access and information):** Whilst an event which caused a Default Notice to be issued or a Finance Default is subsisting, RailCorp must:
- (i) provide to the Security Trustee and any Enforcing Party appointed under the Debt Financiers' Securities (including their agents, consultants and contractors) access to any RailCorp Project Land which PPP Co is entitled to access, subject to:
    - A. the Security Trustee or the Enforcing Party providing notice to RailCorp of its intention to access such RailCorp Project Land; and
    - B. the provisions of the Project Contract, the Call Option Deed, the Maintenance Site Lease and the Maintenance Site Licence; and
  - (ii) to the extent reasonably requested by the Security Trustee or an Enforcing Party appointed under the Debt Financiers' Securities, promptly provide the Security Trustee or that Enforcing Party (as applicable) all information in its possession relevant to the relevant event which caused the Default Notice to be issued, including details of any steps which RailCorp considers appropriate to be taken to remedy the event.
- (c) **(Acknowledgement):** Without limiting any rights the Security Trustee can exercise pursuant to clause 5.3 or 6.1, the Security Trustee acknowledges and agrees that, except to the extent necessary to provide or effect a relevant Remedy or otherwise perform PPP Co's rights and obligations as provided in this clause and clause 6.1, neither it nor any Enforcing Party will in any way unreasonably interfere with the performance by a Core Contractor of its obligations under a Core Contract, including by limiting or otherwise restricting access to the Project Site, without obtaining RailCorp's prior written consent (such consent not to be unreasonably withheld or delayed).

## 5.4 Termination of Project Contract

RailCorp agrees that it will not terminate the Project Contract for a PPP Co Termination Event (other than the PPP Co Termination Event described in clause 50.1(k) (Major Safety Breach)) and will not give a notice under clause 50.2 of the Project Contract unless:

- (a) it first gives the Security Trustee no less than 14 days' written notice of its intention to terminate the Project Contract; and
- (b) within 14 days of receipt of the notice referred to in paragraph (a), the Security Trustee has not given written notice to RailCorp of its intention to step in to remedy the PPP Co Termination Event within the aggregate of:
  - (i) the aggregate cure period (if any) which is available to PPP Co to remedy or cure the relevant PPP Co Event of Default and/or the relevant PPP Co Termination Event under the Project Contract; and
  - (ii) an additional period (which is reasonable having regard to the nature and circumstances of the event), in which to Remedy the PPP Co

Termination Event, as shall be agreed between RailCorp and the Security Trustee.

## 5.5 Step In Report

- (a) After RailCorp notifies the Security Trustee of a PPP Co Termination Event under clause 5.4(a), the Security Trustee (or another Enforcing Party), if it commences to take Enforcement Action, must promptly submit to RailCorp a report ("**Step In Report**") outlining the following information:
- (i) any material obligations which are or will become outstanding by PPP Co to RailCorp under the Project Contract during the Step In Period;
  - (ii) a detailed program to Remedy the PPP Co Event of Default or PPP Co Termination Event and/or prevent the recurrence of a PPP Co Event of Default or PPP Co Termination Event where the relevant PPP Co Event of Default or PPP Co Termination Event is not capable of being remedied or cure;
  - (iii) details of the proposals for performance of obligations which are or will become outstanding by PPP Co to RailCorp under the Project Contract during the Step In Period;
  - (iv) to the best of its knowledge, any events of circumstances which could, with the passing of time or giving of notice or both, become PPP Co Events of Default or PPP Co Termination Events;
  - (v) actions to be taken during the Step In Period which must be reasonable in the circumstances, have regard to any current or proposed exercise of step in rights by RailCorp under the Project Contract;
  - (vi) details of the proposed insurance arrangements during the Step In Period; and
  - (vii) such other information as RailCorp may reasonably require.
- (b) RailCorp may designate an auditor and/or technical advisor to verify any information provided in relation to the Step In Report. Each party to this deed must provide access to and make copies of all records, documents, data and accounting and other information relating to the Project in its possession which the auditor or technical adviser reasonably requires in order to make such verification or itself determine such verification or itself determine such information.
- (c) All costs incurred by any party in relation to the production or verification of the Step In Report will be paid or reimbursed on demand by PPP Co.
- (d) The Security Trustee must consult in good faith with RailCorp to develop and settle the Step In Report.
- (e) The Security Trustee must procure that either it or the Enforcing Party updates the Step In Report and gives written notice to RailCorp's Representative of any further details, plans and reports regarding the implementation of the Step In Report at least once a month during the Step In Period.



## 5.6 Step In Termination

Without limiting clause 5.4, RailCorp agrees that it must not terminate the Project Contract during a Step In Period unless:

- (a) the Security Trustee or another Enforcing Party notifies RailCorp in writing that they do not intend to cure the breach which gave rise to the PPP Co Termination Event;
- (b) prior to the preparation of a Step In Report the Security Trustee or other Enforcing Party did not commence to take and thereafter pursue any diligent steps to perform, or procure the performance of, the material obligations of PPP Co under the Project Agreements and/or did not commence to take and thereafter pursue diligent steps to Remedy the applicable default;
- (c) after the preparation or update of the Step In Report the Security Trustee or other Enforcing Party fails to take diligent steps to Remedy the applicable default in accordance with, or otherwise implement, the Step In Report; or
- (d) a new PPP Co Termination Event occurs during the Step In Period prior to the Remedy of the applicable default identified in the Step In Report other than:
  - (i) a PPP Co Termination Event which arises, in part or in whole, as a result of a circumstance or event which is identified in the Step In Report, and which is being Remedied in accordance with the Step In Report; or
  - (ii) a PPP Co Termination Event which arises, in whole or in part, as a result of an event or circumstance occurring prior to the preparation of the Step In Report, and which is not identified in the Step In Report due to the relevant event or circumstance not being apparent to the Security Trustee at the time the Step In Report was prepared or last updated,

provided that RailCorp may only terminate during the Step In Period for such a new PPP Co Termination Event if the relevant event has a material adverse effect on RailCorp or its ability to provide rail passenger services, and for any other new PPP Co Termination Events, the Step In Report must be updated in accordance with clause 5.5(e).

## 5.7 Step Out

The Security Trustee or other Enforcing Party may, at any time during the Step In Period, with 10 Business Days prior written notice to RailCorp, terminate the Step In Period with effect from the date specified in that notice.

## 5.8 Extension of Step In Period

The Security Trustee may, by written notice to RailCorp, request that the Step In Period be extended. If the Security Trustee makes such a request, it must provide to RailCorp an updated Step In Report containing a detailed description of all steps which the Security Trustee or other Enforcing Party is taking, or proposes to take, during the Step In Period, and any extension of it. Where the Security Trustee or other Enforcing Party is taking diligent steps to Remedy the applicable default in accordance with, and otherwise implement, the Step In Report, and;

- (a) the Security Trustee can demonstrate to RailCorp's reasonable satisfaction that it will complete the Remedy within the further requested period; or

- (b) a Force Majeure Event has occurred during the Step In Period, and prevented the Remedy being completed; or
- (c) RailCorp has stepped in under the Project Contract during the Step In Period, and prevented the Remedy being completed,

then the Step In Period must be extended by such period of up to a further 180 days, as is reasonable having regard to the further period requested by the Security Trustee and the relevant intervening event, if any. The Security Trustee may only request one extension to the Step In Period pursuant to this clause, unless RailCorp otherwise agrees in writing in RailCorp's absolute discretion.

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## 6. Enforcement by Security Trustee

### 6.1 Enforcement by Security Trustee

Without limiting the actions which the Security Trustee may elect to take under the Debt Financing Documents or following the occurrence of any event which causes a Default Notice or a notice under clause 5.4(a) to be issued (whether pursuant to the Debt Financing Documents or otherwise), the Security Trustee and any Enforcing Party appointed under the Debt Financiers' Securities may:

- (a) exercise or perform, or appoint an Enforcing Party to exercise or perform, at any time, some or all of PPP Co's rights and obligations under the Project Agreements;
- (b) engage, or permit an Enforcing Party to engage, one or more other persons to exercise or perform (or seek to exercise or perform) some or all of PPP Co's rights and obligations under the Project Agreements;
- (c) assign, assume, novate, transfer or otherwise dispose of (or seek to assign, assume, novate, transfer or otherwise dispose of), or permit an Enforcing party to assign, assume, novate, transfer or otherwise dispose of (or seek to assign, assume, novate, transfer or otherwise dispose of) all or any of PPP Co's rights and obligations under the Project Agreements and the other assets of PPP Co; and
- (d) deal with any interest in the equity or ownership of PPP Co,

subject to the terms of those documents, this deed (including clauses 6.3 and 6.4) and the rights and duties of the Security Trustee and the Enforcing Party under the Debt Financiers' Securities and at law.

### 6.2 No liability

RailCorp acknowledges that, without limiting the liability of PPP Co (which continues to be responsible for the performance of its obligations under the Project Agreements), none of the Finance Parties nor any Enforcing Party appointed under any of the Debt Financiers' Securities is or will be liable for any obligation or liability of PPP Co under the Project Agreements by reason only of the Debt Financiers' Securities or the exercise or attempted exercise, in accordance with the Debt Financiers' Securities or otherwise, of any of their rights, powers or remedies under the Debt Financiers' Securities or this deed.

### 6.3 Replacement of Core Contractor

- (a) **(No replacement without consent):** If, at any time, the Security Trustee, an Enforcing Party, or PPP Co proposes to Remedy any event, including one which causes a Default Notice or a notice under clause 5.4(a) to be issued by appointing a new contractor to replace a Core Contractor, or by novating a Core Contract (and

other relevant Project Agreements) to a replacement contractor, then the party seeking the appointment or novation must first obtain RailCorp's prior consent, which consent must not be unreasonably withheld or delayed.

- (b) **(When consent must be given):** RailCorp must give its consent where:
- (i) RailCorp has been provided with written details of the proposed replacement contractor and the terms and conditions of the proposed appointment or novation;
  - (ii) the proposed replacement contractor (whether by itself or by way of support from its shareholders or others), in RailCorp's opinion (acting reasonably):
    - A. is reputable and has sufficient experience and expertise in successfully performing the relevant activities;
    - B. has arrangements in place for ensuring the availability of the appropriate skills, resources and Accreditation to perform its obligations to the standards required by the Project Contract; and
    - C. is of sufficient financial and commercial standing to perform its obligations under the relevant Core Contract to the standards required by the Project Contract;
  - (iii) all terms and conditions of the proposed appointment or novation are acceptable to RailCorp (acting reasonably);
  - (iv) the proposed replacement contractor has agreed to be bound by the terms of the relevant Project Agreements or such other terms as agreed to by RailCorp (acting reasonably); and
  - (v) a person other than RailCorp bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
    - A. any enquiries which RailCorp may make for the purposes of determining whether to consent to the appointment or novation;
    - B. the procurement of a replacement contractor; and
    - C. the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar changes in relation to such documentation.

#### 6.4 Disposal of PPP Co's interest

- (a) **(No disposal without consent):** If an Enforcing Party proposes to Remedy any event, including one which causes a Default Notice or a notice under clause 5.4(a) to be issued by assigning, novating, transferring or otherwise disposing of PPP Co's interest in, or obligations under, the Project Agreements or by a sale or other dealing with the capital or equity in PPP Co in accordance with the Enforcing Party's rights or the Debt Financiers' rights under the Debt Financing Documents, the Security Trustee must first obtain RailCorp's prior consent, which consent must not be unreasonably withheld or delayed. If RailCorp consents to a disposal under this clause, it is taken to be permitted under the Project Contract, together with the

contemporaneous disposal to the same purchaser of all of the other assets of PPP Co which are referred to in clause 41 of the Project Contract.

- (b) **(When consent must be given):** RailCorp must give its consent where:
- (i) RailCorp has been provided with written details of the proposed purchaser and the terms and conditions of the proposed disposal;
  - (ii) for any disposal of PPP Co's interest in the Project, the proposed purchaser (whether by itself or by way of support from its shareholders or others), in RailCorp's opinion (acting reasonably):
    - A. is reputable and has sufficient experience and expertise in successfully performing the relevant activities;
    - B. has arrangements in place for ensuring the availability of the appropriate skills, resources and Accreditation to perform its obligations to the standards required by the Project Contract; and
    - C. is of sufficient financial and commercial standing to perform its obligations to the standards required by the Project Contract;
  - (iii) all terms and conditions of the disposal are reasonably acceptable to RailCorp;
  - (iv) for any disposal of PPP Co's interest in the Project Contract, the proposed purchaser has agreed to be bound by the terms of the relevant Project Agreements or such other terms as agreed to by RailCorp; and
  - (v) a person other than RailCorp bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
    - A. any enquiries which RailCorp may make for the purposes of determining whether to consent to the disposal;
    - B. the procurement of a purchaser; and
    - C. the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.
- (c) **(Release of security):** If an assignment, novation or transfer does occur as permitted by this clause (other than by way of a sale of PPP Co's shares to the assignee), the Security Trustee and RailCorp agree to release each of the Debt Financiers' Securities and the RailCorp Securities respectively that are held over the assets and undertaking of PPP Co provided that the assignee, novatee or transferee enters into new securities on the same terms as the RailCorp Securities in favour of RailCorp and any financiers of the assignee, novatee or transferee enter into a new Debt Finance Side Deed with RailCorp and the other parties to the Debt Finance Side Deed on terms consistent with this deed.

## 6.5 Appointment of Enforcing Party

Without derogating from any other rights the Security Trustee may have under this deed, RailCorp agrees that:

- (a) if the Security Trustee appoints an Enforcing Party under the Debt Financiers' Securities, that appointment will:
  - (i) not constitute a breach of a Project Agreement or a PPP Co Event of Default or PPP Co Termination Event; and
  - (ii) cure any Event of Insolvency in respect of PPP Co (in which case a Step In Report is not required to be delivered); and
  - (iii) in respect of an appointment in relation to PPP Co, be taken to remedy any other breach of a Project Agreement, PPP Co Event of Default or PPP Co Termination Event occurring or arising, in part or in full, prior to that appointment,

provided that, in the case of paragraph (iii), the Enforcing Party takes diligent steps to Remedy the applicable default in accordance with the applicable Step In Report and, in any period prior to the Step In Report being finalised in accordance with clause 5.5, commences to take, and thereafter pursues, any diligent steps to perform, or procure the performance of, the material obligations of PPP Co under the Project Agreements and/or commences to take and thereafter pursue diligent steps to Remedy the applicable default; and

- (b) any:
  - (i) Enforcement Action taken by the Security Trustee or an Enforcing Party (appointed under the Debt Financiers' Securities) in accordance with clause 6.1;
  - (ii) replacement of a Core Contractor in accordance with clause 6.3; or
  - (iii) disposal of PPP Co's interest in the Project Agreements or change in ownership of PPP Co in accordance with clause 6.4,

will not, by itself, constitute a breach of the RailCorp Project Agreements or provide RailCorp with the right to terminate any RailCorp Project Agreement.

## **6.6 Documentation**

If RailCorp consents to the replacement of a Core Contractor, or the disposal of PPP Co's interest in the Project Agreements, pursuant to clause 6.3 or 6.4 respectively, RailCorp, the Enforcing Party and the replacement contractor or purchaser (as the case may be) will execute such documents as are reasonably necessary to give effect to the replacement, novation, assignment, transfer or disposal.

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## **7. Finance Default**

### **7.1 Notice of Finance Default**

The Security Trustee must provide written notice to RailCorp of a Finance Default at the same time it gives a notice to PPP Co in relation to that Finance Default, detailing:

- (a) reasonable details of the Finance Default; and
- (b) to the extent it has determined to exercise its rights under the Debt Finance Documents, the proposed date for, and proposed method of, such exercise.

## **7.2 Prior notice of enforcement action**

Without prejudice to its rights under the Debt Financiers Securities, the Security Trustee must not take any action to enforce the Debt Financiers' Securities (other than to draw upon any equity obligation, bond, letter of credit or other surety, convert a floating charge to a fixed charge, exercise rights to control deposits or withdrawals from a bank account or which might be necessary to commence to Remedy a breach of a Project Agreement) or recover any moneys secured under the Debt Financiers' Securities, unless the Security Trustee has first provided to RailCorp:

- (a) in the case of the appointment of another Enforcing Party pursuant to the Debt Financiers' Securities where the Security Trustee is of the reasonable opinion that any delay in such appointment would materially adversely affect the Debt Financiers, no less than 24 hours' prior notice; or
- (b) in all other cases, no less than 10 days' prior notice.

## **7.3 Information to RailCorp**

Upon the occurrence of a Finance Default and while it subsists, the Security Trustee must:

- (a) unless such are privileged (in the opinion of the Security Trustee), provide to RailCorp copies of all material correspondence and documents issued by the Security Trustee to PPP Co relating to the Finance Default; and
- (b) advise RailCorp upon the Security Trustee or Enforcing party drawing upon any equity obligation, bond, letter of credit or other surety, converting a floating charge to a fixed charge, exercising rights to control deposits or withdrawals from a bank account or action which might be necessary to commence to remedy a breach of a Project Agreement.

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## **8. Insurance Proceeds**

### **8.1 Deposit of Insurance proceeds**

The parties agree that all Insurance Proceeds received under the insurance policies specified in clauses 36.1(a)(i) (contract works insurances - Cars), 36.1(a)(ii) (transit insurance - Cars), 36.1(b)(i) (contract works insurance - Maintenance Facility Works), 36.1(b)(ii) (transit insurance - Maintenance Facility Work) and 36.2(a) (industrial special risks insurance) of the Project Contract (to the extent the proceeds are received in respect of the repair or reinstatement of the item of property) must be deposited into the Insurance Proceeds Account in accordance with clause 36.15(b) of the Project Contract, until such time as the Insurance Proceeds are applied, subject to clause 8.2, in accordance with clause 36.15(c) or clause 36.15(e) of the Project Contract.

Subject to the provisions of this clause 8, the Security Trustee must not exercise any rights under the Debt Financing Documents or take any other steps to prevent amounts being released from the Insurance Proceeds Account for application in accordance with clause 36.15(c) of the Project Contract, provided that RailCorp acknowledges that the Insurance Proceeds Account (and moneys deposited to it) will be subject to Debt Financiers' Securities and the Security Trustee (or the Intercreditor Agent) will be an authorised signatory to the Insurance Proceeds Account.

### **8.2 Application of Insurance proceeds**

Despite clause 8.1, if:

- (a) a Car is damaged, lost or destroyed and Insurance Proceeds are available in respect of the Car; and
  - (b) the Car is not required to be repaired or reinstated under the Project Contract,
- the Insurance Proceeds will be applied in reducing the Secured Money under the Debt Financing Documents.

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## **9. Recognition of rights**

### **9.1 Recognition of RailCorp's step-in rights**

The Security Trustee recognises and acknowledges the rights available to RailCorp under:

- (a) clauses 34.5 (Damage to third party property), 36.9 (Failure to produce proof of insurance) and 48 (Step-in) of the Project Contract;
- (b) the Rolling Stock Manufacture Contract Side Deed;
- (c) Maintenance Facility Construction Contract Side Deed; and
- (d) the TLS Contract Side Deed.

### **9.2 Recognition of Security Trustee rights**

- (a) RailCorp acknowledges that under the Debt Financing Documents PPP Co cannot:
  - (i) amend, vary, terminate, rescind, repudiate or accept any termination, rescission or repudiation of the Project Agreements or agree to any of the above;
  - (ii) grant any waiver or release under or in relation to the Project Agreements; or
  - (iii) enter into any document or agreement which has the effect of varying or supplementing the Project Agreements,except in accordance with the Debt Financing Documents. Any purported amendment, variation, termination, rescission, repudiation (otherwise than by breach), acceptance, waiver, release, document or agreement not in accordance with the Debt Financing Documents will be ineffective.
- (b) The Security Trustee acknowledges the rights (RailCorp Tripartite Rights) of RailCorp under each of the Rolling Stock Manufacture Contract Side Deed, the Maintenance Facility Construction Contract Side Deed and the TLS Contract Side Deed to, amongst other things, require an assignment or novation of the Rolling Stock Manufacture Contract, the Maintenance Facility Construction Contract and the TLS Contract respectively if the Project Contract is terminated.
- (c) RailCorp acknowledges the rights of the Security Trustee under each Debt Financiers Tripartite Deed and agrees that if the Security Trustee exercises its rights to Step In in accordance with clause 5 (or appoints an Enforcing Party to do so), the rights of the Security Trustee under the Debt Financiers Tripartite Deed will take precedence over the rights of RailCorp referred to in clause 9.2(b) for the duration of the Step In Period, provided that RailCorp's prior written consent where required under this deed is obtained to any substitution of a Core Contractor or to the assignment, termination or novation of a Core Contract.

### 9.3 Return of Maintenance Facility

Each party acknowledges and agrees that:

- (a) pursuant to clause 52.4 (Return of Maintenance Facility) of the Project Contract, PPP Co must surrender and return to RailCorp the Maintenance Site, the Maintenance Facility, the Unfixed Maintenance Plant and Equipment and the Maintenance Parts and Materials on the terms specified therein; and
- (b) any dealing with the Maintenance Site, the Maintenance Facility, the Unfixed Maintenance Plant and Equipment and the Maintenance Parts and Materials pursuant to the Financiers' Securities is subject to the obligations of PPP Co under clause 52.4 (Return of Maintenance Facility) of the Project Contract.

### 9.4 Dispute resolution

RailCorp acknowledges and agrees that the Security Trustee may attend any dispute resolution proceedings under clause 53.3 (Expert Determination) or clause 53.9 (Arbitration) of the Project Contract with the prior consent of RailCorp (such consent not to be unreasonably withheld or delayed). RailCorp agrees that it will not conduct any such meetings, negotiations, arbitrations or hearings without first giving the Security Trustee reasonable notice.

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## 10. Undertakings in relation to Project Agreements

### 10.1 Amendments to Debt Financing Documents

- (a) **(No amendments without consent):** Other than to evidence a permitted Refinancing under clause 44 of the Project Contract or otherwise where the consent of RailCorp is given under the Project Contract or is not required to be obtained by PPP Co under the Project Contract, the Security Trustee undertakes to RailCorp that it will not agree to or permit any variation or replacement of any Debt Financing Document which is likely to increase or change the liabilities or obligations of RailCorp under the Project Agreements or otherwise adversely impact RailCorp under a Project Agreement without RailCorp's prior consent, which consent must not be unreasonably withheld or delayed and if requested under clause 44 of the Project Contract, must be given or withheld within the period prescribed thereunder.
- (b) **(Consequences of amending without consent):** If any Debt Financing Document as originally executed and delivered by the parties thereto is varied or replaced without RailCorp's prior consent or otherwise than as permitted under paragraph (a), then RailCorp will only be liable under the Project Agreements to the extent it would have been had there been no such variation or replacement to the Debt Financing Document.

### 10.2 Amendments to RailCorp Project Agreements

RailCorp undertakes to the Security Trustee that it will not agree to or permit any variation of any RailCorp Project Agreement or the Base Case Financial Model (other than minor technical variations which could not reasonably affect the interests of the Debt Financiers) without the Security Trustee's prior consent, which consent must not be unreasonably withheld or delayed. Without limiting the foregoing RailCorp and the Security Trustee agree that RailCorp will not approve another rating for the purpose of the definition of Required Rating in the Project Contract without the prior consent of the Security Trustee.



### 10.3 Assignment of obligations under Debt Financing Documents

- (a) **(No assignment without consent):** The Security Trustee must not (and must not permit any Debt Financier whose commitments are not fully drawn or utilised, to, during the Delivery Phase) transfer or assign or to take any steps to transfer or assign any of its rights or obligations under any or all of the Debt Financing Documents except as contemplated or permitted by the Debt Financing Documents without RailCorp's prior consent, which consent must not be unreasonably withheld.
- (b) **(When consent must be given):** RailCorp must give its consent if:
  - (i) the proposed transferee or assignee is a bank or financial institution with a rating of not less than the Required Rating; or
  - (ii) the obligations and liabilities of the proposed transferee or assignee are guaranteed and indemnified, on terms acceptable to RailCorp, by a financial institution with a rating not less than the Required Rating.

### 10.4 Payments

PPP Co irrevocably directs RailCorp to make any payments RailCorp is required to make to PPP Co under the Project Agreements:

- (a) until the Final Commercial Operations Date, to the General Construction Account; and
- (b) after the Final Commercial Operations Date, to the Proceeds Account,

or such other bank accounts as the Security Trustee may direct in writing from time to time, RailCorp undertakes to comply with these directions.

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## 11. Assignment

### 11.1 No assignment without consent

Subject to clause 11.2, no party may assign, novate or otherwise transfer any of its rights or obligations under this deed, or any of the other Project Agreement to which it is a party, without the prior consent of each other party to this deed, which consent must not be unreasonably withheld.

### 11.2 Assignment by RailCorp

Nothing will prevent the assignment, novation or transfer by RailCorp to an assignee, novatee or transferee of RailCorp's rights and obligations under the Project Contract made in accordance with clause 41.1 (Assignment by RailCorp) of the Project Contract, provided the proposed assignee, novatee or transferee agrees to execute a deed in favour of the Security Trustee (in such form as the Security Trustee reasonably requires) under which the assignee, novatee or transferee agrees to be bound by this deed as if it were RailCorp.

### 11.3 Change of Security Trustee

The Security Trustee may at any time assign and novate all its rights and obligations under this deed and the Debt Financing Documents without the consent of PPP Co or RailCorp to a person that:

- (a) takes an assignment of the Debt Financiers' Securities;

- (b) is appointed as a new trustee of the trust of which the Security Trustee is trustee and holds any Debt Financiers' Securities; and
- (c) is a public trustee company, a subsidiary of an existing Debt Financier or its otherwise reasonably acceptable to RailCorp,

and each party agrees to sign all documents necessary to evidence such a transaction including a novation deed in respect of this deed in form reasonably acceptable to RailCorp and the Security Trustee.

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## **12. Acknowledgement by PPP Co**

PPP Co and PPP Co Finance Co acknowledge and consent to this deed and the transactions contemplated by it and will co-operate in its implementation.

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## **13. Disclosure, confidentiality and publicity**

### **13.1 Disclosure by RailCorp**

RailCorp may publish or disclose (on the internet or otherwise):

- (a) the terms and conditions of this deed or any other Project Agreement; and
- (b) any document or information arising under, out of or in connection with this deed or any other Project Agreement or relating to the performance of this deed or any other Project Agreement,

except for the information which is specified in schedule 13 of the Project Contract (Confidential information) and the disclosure of which is not otherwise within the scope of clauses 13.2 or 13.4.

### **13.2 Public disclosure**

- (a) PPP Co acknowledges and agrees that disclosures regarding the Project by RailCorp, the State or any Authority may be required:
  - (i) under the *Freedom of Information Act* 1989 (NSW);
  - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,("Public Disclosure Obligations").
- (b) PPP Co must, at its own cost and expense, use all reasonable endeavours to assist RailCorp, the State or an Authority in meeting its Public Disclosure Obligations.

### **13.3 Confidentiality**

Subject to clauses 13.1, 13.2 and 13.4, no party will, at any time, whether before or after the expiration or sooner determination of the Contract Term, without the consent of each other party, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than to the parties to the Project Agreements, their officers, employees, consultants, advisers and agents to the extent they require the relevant information to enable them properly to carry out their duties):

- (a) any of the documents (or parts of documents) or information which are specified in schedule 13 of the Project Contract;

- (b) any information relating to the negotiations concerning the same; or
- (c) any information which may have come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of any other party.

### **13.4 Exceptions**

The restrictions imposed by clause 13.3 will not apply to the disclosure of any information:

- (a) which is now or after the date of this deed comes into the public domain or which is obtainable with no more than reasonable diligence from sources other than the parties;
- (b) which is required to be disclosed by law or the listing rules of any recognised stock exchange (if applicable);
- (c) as required by a House of Parliament, by a Committee of a House of Parliament or for any legitimate Government purpose or process;
- (d) pursuant to the contract summary required to be published in accordance with Premier's Memorandum No. 2000-11 dated 27 April 2000 and the New South Wales Government "Working with Government Guidelines for Privately Financed Projects" November 2001;
- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing party is a party or to an expert in the course of any determination by him to which the disclosing party is a party; or
- (f) which, in the reasonable opinion of RailCorp, PPP Co or the Security Trustee (as the case may be), is required to be disclosed to:
  - (i) any actual or prospective investors in, derivative providers or providers of financial accommodation (including bondholders) or sureties to, or a monoline insurer or reinsurer of (or assignee or novatee of such parties) to PPP Co, PPP Co Finance Co, shareholders of PPP Co or any subcontractor or entities with an interest in any of them, in respect of the Project and in each case to the extent reasonably necessary to enable a decision to be taken on the proposal;
  - (ii) any ratings or similar agency for the purposes of PPP Co, or instruments issued by it, being rated;
  - (iii) any Enforcing Party;
  - (iv) any actual or prospective insurer in respect of the Project;
  - (v) any person to whom disclosure is reasonably required to enable RailCorp to comply with passenger and crew consultation requirements in respect of the design of the Sets and the Simulators; or
  - (vi) any person to whom disclosure is reasonably necessary to enable that person to comply with the Project Agreements to which it is a party.

### **13.5 Publicity**

Subject to clause 13.3 and except for notices which PPP Co and the Security Trustee are required to disclose to any recognised stock exchange, PPP Co and the Security Trustee must:

- (a) not make any public announcements or statements in relation to the Project without RailCorp's prior consent;
- (b) use reasonable endeavours to agree with RailCorp the wording and timing of all public announcements and statements by it or its contractors relating to the Project before the relevant announcement or statement is made;
- (c) give RailCorp a draft of any proposed media release relating to the Project and obtain RailCorp's approval of the media release before distributing it;
- (d) give RailCorp a copy of any announcement or media release as soon as practicable after it is made or distributed; and
- (e) ensure that its Associates comply with the requirements referred to in this clause 13.5.

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## 14. Termination

This deed will terminate on the date the Security Trustee notifies RailCorp that it is satisfied that the Actual Debt has been fully and finally repaid (and cannot be the subject of any form of claw back under laws relating to insolvency). The Security Trustee agrees to promptly notify RailCorp when it is so satisfied.

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## 15. Notices

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

- (a) must be in writing;
- (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 NSW 2008  
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 NSW 2000  
Fax: +61 2 9087 4000  
For the attention of: PPP Co's Representative

**PPP Co Finance Co:**

Name: Reliance Rail Finance Pty Limited  
Address: Level 6 ABN Amro Tower  
88 Phillip Street  
Sydney NSW 2000  
Fax: +61 2 9087 4000  
For the attention of: Project Manager

**Security Trustee:**

Name: Permanent Registry Limited  
Address: Level 4  
35 Clarence Street  
Sydney NSW 2000  
Fax: +61 2 8295 8652  
For the attention of: Senior Manager - Securitisation Trusts

- (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 15(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.

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**16. Governing law and jurisdiction**

**16.1 Governing law**

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

## **16.2 Jurisdiction**

Without prejudice to the operation of the dispute resolution provisions contained in clause 53 of the Project Contract, 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 inconvenient forum, if that venue falls within clause 16.2(a).

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## **17. Miscellaneous**

### **17.1 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

### **17.2 Further acts and documents**

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

### **17.3 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.

### **17.4 Consents**

A consent required under this deed from RailCorp may be given or withheld, or may be given subject to any conditions, as RailCorp (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

### **17.5 Amendments**

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

## **17.6 Expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

## **17.7 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

## **17.8 Counterparts**

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

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## **18. Right of Entry Deed**

### **18.1 Acknowledgement**

RailCorp acknowledges and agrees that the Debt Financiers' Securities are not in breach of the Right of Entry Deed and that clause 6.2 extends to the Right of Entry Deed as if it were a Project Agreement.

### **18.2 Compliance**

RailCorp consents to the Right of Entry Deed and the Option Deed and to the exercise by PPP Co of its rights under them and undertakes to comply with the terms and conditions of the Right of Entry Deed and the Lease.

### **18.3 RailCorp's dealings with Right of Entry Deed or Lease**

If RailCorp chooses to assign, novate, transfer or otherwise dispose of or deal with, or create or part with possession of an interest in, including by way of Security Interest, its rights or obligations under or interest in the Right of Entry Deed, the Lease or the land the subject of it, RailCorp must procure that the assignee, novatee or transferee:

- (a) executes deeds on the same terms and conditions as the Right of Entry Deed and the Lease (or otherwise as agreed between the assignee, novatee or transferee and the Security Trustee) at the same time; and
- (b) enters into a tripartite deed with PPP Co and the Security Trustee on similar terms and conditions to the relevant parts of this deed.

### **18.4 PPP Co's rights and obligations**

RailCorp agrees that the Security Trustee or any Enforcing Party may:

- (a) 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 the Right of Entry Deed and the Option Deed as if it were PPP Co;

- (b) take any steps to remedy or procure the remedy of any default by PPP Co under or in connection with the Right of Entry Deed; and
- (c) assign, novate, transfer or otherwise dispose of all or any PPP Co's rights and/or obligations under or in connection with and/or interest in the Right of Entry Deed to any person RailCorp consents to under clause 6.4(a) of this deed and the parties agree to do anything reasonably requested by the Security Trustee to give effect to that assignment, novation, transfer or disposal.

## 18.5 No variation, termination etc

RailCorp must not vary, replace, terminate, rescind or accept the repudiation or surrender of or the granting of any waiver under or in relation to the Right of Entry Deed or the Lease.

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## 19. RailCorp Remedy Costs

### 19.1 RailCorp Remedy Costs regime

RailCorp agrees with the Security Trustee that if:

- (a) during any period of step in under clause 48, of the Project Contract, or after notice has been given by RailCorp under clause 5.4; or
- (b) after RailCorp gives PPP Co a notice under clause 51.1,

RailCorp proposes to incur or deduct any RailCorp Remedy Costs, it may only include such RailCorp Remedy Costs in the RailCorp Priority Moneys if:

- (c) it has given the Security Trustee a notice stating that it proposes to incur or deduct RailCorp Remedy Costs during its step in under clause 48 of the Project Contract or following the giving of a notice under clause 51.1 (as applicable);
- (d) the notice is given not less than 21 days prior to the date that RailCorp will first incur any such costs; and
- (e) on or prior to the date in paragraph (d), the Security Trustee delivers to RailCorp a Draft Car Remedy Plan (see clause 19.2), and after it becomes an Approved Car Remedy Plan, fails to procure that the works the subject of the Approved Car Remedy Plan are completed under the Approved Car Remedy Plan.

### 19.2 Car Remedy Plan

- (a) A Draft Car Remedy Plan ("**Draft Car Remedy Plan**") must describe the actions and measures which the Security Trustee or Enforcing Party will diligently pursue to:
  - (i) where clause 19.1(a) applies, Remedy the default of the Project Contract which has resulted in any RailCorp Remedy Costs needing to be expended ("**Remedy Plan Default**") which will have regard to the step in of RailCorp under clause 48 of the Project Contract; or
  - (ii) where clause 19.1(b) applies, bring the condition of the relevant Cars to the condition they would have been in had PPP Co complied with its obligations under the Project Contract.



- (b) Within 10 Business Days after receipt of the Draft Car Remedy Plan, RailCorp must either:
  - (i) approve the Draft Car Remedy Plan by notifying the Security Trustee or Enforcing Party; or
  - (ii) reject the Draft Car Remedy Plan by notifying Security Trustee or Enforcing Party and providing reasons to Security Trustee or Enforcing Party (as relevant) for its rejection.
- (c) If RailCorp approves a Draft Car Remedy Plan pursuant to clause 19.2(b) (the "**Approved Car Remedy Plan**"):
  - (i) the period of time in the Approved Car Remedy Plan to Remedy the Remedy Plan Default is the cure period (the "**Applicable Cure Period**"); and
  - (ii) the Security Trustee or Enforcing Party must comply with and implement the Approved Car Remedy Plan (or otherwise diligently pursue the Remediation of the Remedy Plan Default) and Remedy the Remedy Plan Default within the Applicable Cure Period.
- (d) If RailCorp rejects a Draft Car Remedy Plan pursuant to clause 19.2(b)(ii), the Security Trustee or Enforcing Party, in consultation in good faith with RailCorp, must amend the Draft Car Remedy Plan to meet RailCorp's reasonable requirements and submit the amended Draft Car Remedy Plan to RailCorp for its approval, in which case this clause 19.2 will apply to the amended Draft Car Remedy Plan as if it were originally submitted under clause 19.1(c).

### **19.3 Extension to Applicable Cure Period**

- (a) If the Security Trustee or Enforcing Party reasonably determines that it requires an extension to an Applicable Cure Period it may (no later than the expiration of the then Applicable Cure Period) submit in writing to RailCorp:
  - (i) evidence that Security Trustee or Enforcing Party has diligently pursued and is continuing to diligently pursue the Remediation of the applicable Remedy Plan Default but that the Remedy Plan Default cannot, despite such diligence, be Remedied within the Applicable Cure Period; and
  - (ii) the reasonable period of time proposed to the Security Trustee or the Enforcing Party to be the extended Applicable Cure Period for the applicable Approved Car Remedy Plan.
- (b) RailCorp will not unreasonably refuse to grant an extension of the Applicable Cure Period for the applicable Approved Cure Plan if the Security Trustee or the Enforcing Party satisfies the requirements of clause 19.3(a).
- (c) If RailCorp grants an extension of the Applicable Cure Period in accordance with clause 19.3(b):
  - (i) the Security Trustee or Enforcing Party must comply with and implement the applicable Approved Car Remedy Plan (or otherwise diligently pursue the Remediation of the Remedy Plan Default); and
  - (ii) such extended period of time will be the Applicable Cure Period.

- (d) The Security Trustee or Enforcing Party may only apply once for an extension of the Applicable Cure Period in respect of a particular Remedy Plan Default, unless RailCorp otherwise agrees in writing in RailCorp's absolute discretion.

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*[Faint signature]*

*[Faint signature]*

*[Faint signature]*

*[Faint signature]*

*[Faint signature]*

*[Faint signature]*

Executed as a deed.

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



Signature of Witness

**Owen John Hayford**

Name of Witness in full

Signed sealed and delivered for and on behalf  
of **Reliance Rail Pty Limited** (in its capacity as  
trustee of the Reliance Rail Trust) by

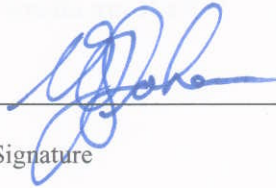
*Craig Pauline*  
its Attorney under a Power of Attorney dated  
*24 November 2006*  
and the Attorney declares that the Attorney has not  
received any notice of the revocation of such Power  
of Attorney, in the presence of:



Signature of witness

*Marina Linda Tinning*

Name of witness in full



Signature



Signature of Attorney

*Craig C. Pauline*

Name of Attorney in full

Signed sealed and delivered for and on behalf of **Reliance Rail Finance Pty Limited** by

*Greg Pauline*  
its Attorney under a Power of Attorney dated  
*24 November 2006*

and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

*Matthew Stott*

Signature of witness

**Matthew Stott**

Name of witness in full

*Greg Pauline*

Signature of Attorney

*Greg Pauline*

Name of Attorney in full

Signed sealed and delivered for and on behalf of **Permanent Registry Limited** by  
**Paul Anthony Armstrong**

its Attorney under a Power of Attorney dated  
*28.11.06*

and registered Book No. and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

*Anthony Walsh*

Signature of Witness

*ANTHONY WALSH*

Name of Witness in full

*Paul Anthony Armstrong*

Signature of Attorney