

CLAYTON UTZ

Deed of Variation No. 2
RailCorp Rolling Stock PPP
Project Contract No C01645

Rail Corporation New South Wales
ABN 59 325 778 353

RailCorp

Reliance Rail Pty Limited as trustee of the Reliance Rail Trust
ABN 48 077 619 824

PPP Co

BNY Trust (Australia) Registry Limited
ACN 000 334 636

Security Trustee

Permanent Custodians Limited
ACN 001 426 384

Intercreditor Agent

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Deed of Variation No. 2 made at Sydney on 15 February

2007 JMH

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 48 077 619 824 as trustee of the Reliance Rail Trust, of Suite 2, Level 9, 333-339 George Street, Sydney, New South Wales

("PPP Co")

BNY Trust (Australia) Registry Limited ACN 000 334 636 of Level 4, 35 Clarence Street, Sydney, New South Wales

("Security Trustee")

Permanent Custodians Limited ACN 001 426 384 of Level 4, 35 Clarence Street, Sydney, New South Wales

("Intercreditor Agent")

Background

- A. On 3 December 2006, RailCorp and PPP Co entered into the RailCorp Rolling Stock PPP Project Contract No CO1645 (the "Project Contract").
- B. Clause 54.1 of the Project Contract sets out the manner in which communications under or in connection with the Project Contract must be made. It contemplates that all communications will be either hand delivered, posted by prepaid post or sent by fax.
- C. RailCorp and PPP Co wish to amend the communication procedure set out in clause 54.1 to allow for communications to be made by email.
- D. Pursuant to clause 10.2 of the Debt Finance Side Deed, the Security Trustee's consent is required for any variations to the Project Contract.
- E. Pursuant to clause 4.3(c)(i) of the Common Terms Deed, the Intercreditor Agent's consent is required for any material variations to the Project Contract.

Operative provisions

1. Definitions and interpretation

1.1 Definitions from Project Contract

Unless otherwise defined in this deed, words defined in the Project Contract have the same meaning when used in this deed.

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) "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) a reference in a schedule, exhibit, attachment or annexure to a clause, paragraph, section, schedule, exhibit, attachment or annexure is a reference to a clause, paragraph, section, schedule, exhibit, attachment or annexure to or of that schedule, exhibit, attachment or annexure;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" or "such as" in any form are not words of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Contra proferentem

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafted this deed or any provision in it.

2. Amendment to Project Contract

RailCorp and PPP Co agree to amend clause 54 of the Project Contract with effect from the date of this deed to read as set out in Schedule 1 of this deed.

3. Consent of Security Trustee and Intercreditor Agent

The Security Trustee and the Intercreditor Agent consent to the amendment to the Project Contract described in clause 2.

4. Governing law and jurisdiction

4.1 Governing law

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

4.2 Jurisdiction

- (a) Each party irrevocably submits to the 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 in any way to this deed.
- (b) Each party irrevocably 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 in an inconvenient forum, if that venue falls within clause 4.2(a).

5. Miscellaneous

5.1 Further acts

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 the other party to give effect to this deed.

5.2 Expenses

Each party must bear its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

5.3 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.

Schedule 1
Amendment to clause 54.1

54.1 Notices

Subject to clause 54.5, each communication (including each notice, consent, approval, request and demand) under or in connection with this Contract:

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

RailCorp

Name: Rail Corporation New South Wales
Address: Level 6, 18 Lee Street,
Chippendale, New South Wales
Fax: +61 2 9379 4378
Email: pppnotices@railcorp.nsw.gov.au
For the attention of: RailCorp's Representative (Rolling Stock PPP)

PPP Co

Name: Reliance Rail Pty Limited
Address: Suite 2, Level 9, 333 George Street,
Sydney, New South Wales
Fax: +61 2 8339 9333
Email: correspondence@rr.incite.com.au
For the attention of: PPP Co's Representative

- (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:
 - (i) delivered or posted by prepaid post to the address;
 - (ii) sent by fax to the number; or
 - (iii) sent by email in the form of a .pdf file of a letter (with or without attachments) to the email address,of the addressee, in accordance with clause 54.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
 - (ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the machine from which it was sent;
 - (iii) (in the case of email) at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification

received by the party sending the email from the recipient specified in clause 54.1(b); and

- (iv) (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:

- (v) 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
- (vi) 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.

With respect to communications sent by email:

- (f) only the letter in .pdf format attached to the email and, subject to paragraph (g), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 54.1. Any text in the body of the email or the subject line will not form part of the communication;
- (g) an attachment to an email referred to in clause 54.1(d)(iii) will only form part of a communication under this clause 54.1 if it is in .pdf, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (h) the parties agree, with respect to any communications under or in connection with this Contract:
- (i) to ensure that their respective firewall and/or mail server (as applicable):
- A. allows messages of up to 100 MB to be received;
- B. does not trap any messages in the spam filter which:
- 1) in the case of notices sent by RailCorp to PPP Co, have been sent from the railcorp.nsw.gov.au domain; and
- 2) in the case of notices sent by PPP Co to RailCorp, have been sent from the rr.incite.com.au domain; and
- C. automatically sends a receipt notification to the sender upon receipt of a message; and
- (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

54.1A Formal and informal communications

RailCorp and PPP Co wish to distinguish formal communications from informal communications.

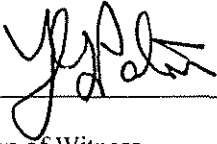
A formal communication is one which complies with the requirements of clause 54.1. An informal communication is one which does not comply with the requirements of clause 54.1. Examples of informal communications include:

- (a) oral communications, whether made during meetings, discussions, over the phone or otherwise; and
- (b) communications sent by email which are not formal communications (for example, an email which does not attach a .pdf file of a signed letter).

Formal communications will have effect as communications under or in connection with this Contract. Informal communications, on the other hand, will not be treated as communications under or in connection with this Contract. Informal communications will not affect RailCorp's or PPP Co's rights or obligations under or in connection with this Contract, and cannot be relied upon.

Executed as a deed.

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

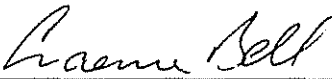


Signature of Witness

F. G. PATON.

Name of Witness in full

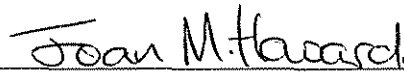
Executed by **Reliance Rail Pty Limited** as trustee of the Reliance Rail Trust in accordance with section 127 of the *Corporations Act* by or in the presence of:



Signature of Secretary/other Director

GRAEME BELL

Name of Secretary/other Director in full



Signature



Signature of Director and Secretary

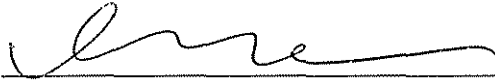
ALAN CAMERON

Name of Director and Secretary in full

Signed sealed and delivered for and on behalf of **BNY Trust (Australia) Registry Limited** by

its Attorney under a Power of Attorney **MARGARET LUBY**
dated 1 SEPTEMBER 2007

and registered Book 4528 No. 947 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

DAVID ABLEN

Name of Witness in full

Signed sealed and delivered for and on behalf of **Permanent Custodians Limited** by

its Attorney under a Power of Attorney **MARGARET LUBY**
dated 1 SEPTEMBER 2007

and registered Book 4528 No. 947 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



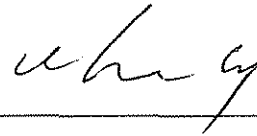
Signature of Witness

DAVID ABLEN

Name of Witness in full



Signature of Attorney



Signature of Attorney