

**CLAYTON UTZ**

## **Existing Investors Side Deed**

in respect of the Reliance Rail Holding Trust

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

**Each Equity Security Holder listed in Part A of Schedule 1**

**Each Note Holder listed in Part B of Schedule 1**

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Equity Side Deed dated 3 February 2012

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

**Each Equity Security Holder listed in Part A of Schedule 1**

**Each Note Holder listed in Part B of Schedule 1**

**Background**

- A.        The State has agreed to make an equity capital commitment in relation to the Project and accordingly has agreed to subscribe for the Subscription Securities on and subject to the terms of the Capital Commitment Deed.
- B.        Each Equity Security Holder has agreed to sell to the State all of the Equity Securities held by the relevant Equity Security Holder.
- B.        Each Note Holder has separately agreed to sell to the State all of the Notes held by the relevant Note Holder.
- C.        The parties have also agreed to a number of other matters as set out in this deed to facilitate the State's possible investment in the Project and the Equity Security Holders' and Note Holders' exit from their investment in the Project.

**Operative provisions**

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**1.        Definitions and interpretation**

**1.1       Definitions**

In this deed:

**Adjusted Profit Amount** has the meaning given in clause 9.6(c).

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

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

**AMP - IEF Investor Group** means AMP - IEF Co and AMP - IEF.

**AMP - GIF Investor Group** means AMP - GIF Co and AMP GIF.

**AMP - REST Investor Group** means AMP - REST Co and AMP REST.

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

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

**Capped Amount** means, in respect a Note Holder, the aggregate face value of the Notes that the Note Holder holds at the Record Date.

**Claim** means a claim, demand or cause of action however it arises.

**Commitment Fee** has the meaning given in the Capital Commitment Deed.

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

**Conditions** has the meaning given in the Capital Commitment Deed.

**Contributor** has the meaning given in the Capital Commitment Deed.

**Control** means:

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

and "**Controlled**" has a corresponding meaning.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Creditor** has the meaning given in the Common Terms Deed.

**Deed of Accession** means the deed of accession contemplated by clause 8.6(c) and substantially in the form of the Deed of Accession set out in Annexure A.

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

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

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

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

**Direct Competitor of** [REDACTED] has the meaning given in the Capital Commitment Deed.

**Dispose** in relation to a person and any property means:

- (a) to sell transfer, assign, swap, surrender, gift, create or allow to exist an Encumbrance, option or trust over or otherwise deal with or dispose of that property (or any legal or beneficial interest in it or part of it); or
- (b) to do anything which has the effect of placing a person in substantially the same position as if that person had done any of the things specified in paragraph (a).

and **Disposal** has a corresponding meaning.

**DOW Investor Group** means DOW Co and DOW.

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

- (a) the day on which Subscription Completion occurs; and
- (b) the date this deed is terminated in accordance with clause 3.2.

**Encumbrance** has the meaning given in the Common Terms Deed.

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

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

**Equity Proportion** means, in relation to an Investor Group, a fraction (expressed as a percentage) the numerator of which is the total number of Stapled Securities held by that Investor Group on the Record Date and the denominator of which is the total number of Stapled Securities (including the Stapled Securities held by that Investor Group) on the Record Date:

- (a) on issue at that time; or
- (b) where the context requires something to be apportioned between a number of Investor Groups, held by those Investor Groups,

and in each case the numerator and the denominator must be calculated on the assumption that all Securities (other than Notes) that are convertible into Equity Securities have been converted in full.

**Equity Security** means a Share and a Unit.

**Equity Security Completion** means completion of the sale and purchase of the Equity Securities in accordance with clause 4.3.

**Equity Security Completion Date** has the meaning given in clause 4.2.

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

**Equity Subscription Agreement (Holding)** means the agreement entitled "Equity Subscription Agreement (Holding) in respect of the Reliance Rail Holding Trust" dated 27 November 2006 between the Holding Company (in its own right and as trustee of the Holding Trust), the Operating Company (in its own right and as trustee of the Operating Trust), the Finance Company, Babcock & Brown Australia Pty Limited ACN 002 348 521, ABN AMRO Australia Pty Limited ACN 000 862 797, the Equity Security Holders and the Note Holders.

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

**Fair Market Value** means, in relation to any Stapled Securities, the fair market value of those Stapled Securities determined in accordance with clauses 9.4 and 9.5.

**Finance Company** means Reliance Rail Finance Pty Limited ACN 120 380 805.

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

**GST** has the meaning given in the GST Act.

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

**Holding Company** means Reliance Rail Holdings Pty Limited ACN 111 280 169, in its own right and as trustee of the Reliance Rail Holding Trust (as the case may be).

**Holding Trust** means Reliance Rail Holding Trust.

**Independent Valuer** has the meaning given in clause 9.3.

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

**Investor Group** means each of the AMP - IEF Investor Group, the AMP - GIF Investor Group, the AMP - REST Investor Group, the DOW Investor Group, the IPP Investor Group and the RBS Investor Group.

**IPP Investor Group** means IPP.

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

**Note Completion** means completion of the sale and purchase of the Notes in accordance with clause 5.3.

**Note Completion Date** has the meaning given in clause 5.2.

**Notes** means the loan notes comprising A1 class notes and B class notes in the Holding Trust issued by the Holding Company (as trustee of the Holding Trust) in accordance with the Deed Poll (Holding) and the Equity Subscription Agreement (Holding).

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

**Noteholder Deed Poll** has the meaning given in the Deed Poll (Holding).

**Obligor** has the meaning given in the Common Terms Deed.

**Operating Company** means Reliance Rail Pty Limited ACN 111 280 427, in its own right and as trustee of the Reliance Rail Trust (as the case may be).

**Operating Trust** means Reliance Rail Trust.

**Permitted Transfer** means:

- (a) a Disposal of any of the Stapled Securities held by the State to a Permitted Transferee; or
- (b) the assignment or transfer by the State (in whole or in part) of its rights and obligations under the Capital Commitment Deed and its rights under clauses 4 to 8 of this deed to a Permitted Transferee.

**Permitted Transferee** means, in relation to the State:

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

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

**Profit Amount** means:

- (a) in the case where a Trigger Event 1 occurs, the amount calculated in accordance with the following formula:

$$PA = \text{[REDACTED]} - \text{[REDACTED]}$$

where:

PA is the Profit Amount;

[REDACTED] is the amount equal to the [REDACTED]; and

[REDACTED] is the amount equal to the [REDACTED]

- (b) in the case where a Trigger Event 2 occurs, the amount calculated in accordance with the following formula:

$$PA = \text{[REDACTED]}$$



where:

PA

is the Profit Amount;

[REDACTED]

is the amount equal to

[REDACTED]

Base Case Return<sup>1</sup>

is the amount calculated in accordance with the following formula:

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

n<sup>1</sup>

is the number of days from (and including) the Subscription Funding Date to (but excluding) the date of completion of the relevant Stapled Securities Disposed of at that time;

Distributions<sup>1</sup>

is, subject to the application of this formula to more than one distribution or other return of capital as contemplated below, the amount calculated in accordance with the following formula:

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

and, in the case where there is more than one distribution or other return of capital received in respect of the Stapled Securities Disposed of at that time, the above formula will be applied in respect of each distribution or other return of capital received and the sum of those amounts calculated in accordance with the above formula will be "Distributions<sup>1</sup>"; and

[REDACTED]

(c) in the case where a Trigger Event 3 occurs, an amount calculated in accordance with the following formula:

PA = [REDACTED]

where:

PA is the Profit Amount;

[REDACTED]

[REDACTED] is the amount calculated in accordance with the following formula:

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

is, subject to the application of this formula to more than one distribution or other return of capital as contemplated below, the amount calculated in accordance with the following formula:

[REDACTED]

where:

[REDACTED]

and, in the case where there is more than one distribution or other return of capital received in respect of the Stapled Securities

[REDACTED] the above formula will be applied in respect of each distribution or other return of capital received and the sum of those amounts calculated in accordance with the above formula will be "Distributions<sup>2</sup>"; and

[REDACTED]

**Project** has the meaning given in the Project Contract.

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

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

**Proportional Upside Payment Amount** has the meaning given in clause 9.8.

**Record Date** means:

- (a) prior to the date of Subscription Completion, the date immediately prior to the applicable Trigger Event; and
- (b) after the date of Subscription Completion, the date immediately prior to Subscription Completion.

**Related Bodies Corporate** has the meaning given in the Corporations Act.

**Relevant Trust** means:

- (a) in respect of AMP Investment Services Pty Limited, respectively:
  - (i) AMP Capital Infrastructure Equity Fund; and
  - (ii) AMP Capital Global Infrastructure Fund No. 2;
- (b) in respect of AMP Capital Investors Limited, REST Infrastructure Fund; and
- (c) in respect of RBS Funds Management (Australia) Limited, RBS Rail Investment (Australia) Trust.

**RBS Investor Group** means RBS Co and RBS.

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

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

**Reliance Rail Undertakings Deed** has the meaning given in the Restructure Co-Ordination Deed.

**Restructure Agreements** has the meaning given in the Restructure Co-Ordination Deed.

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

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

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

**Securities** means:

- (a) the Stapled Securities; and

(b) any other securities issued by the Holding Company (in its own right and as trustee of the Holding Trust).

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

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

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

**State Act** has the meaning given in clause 1.9.

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

**Subscription Amount** means has the meaning given in the Capital Commitment Deed.

**Subscription Completion** has the meaning given in the Capital Commitment Deed.

**Subscription Funding Date** has the meaning given in the Capital Commitment Deed.

**Subscription Securities** has the meaning given in the Capital Commitment Deed.

**Subsidiary** has the meaning given in the Corporations Act.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

**Threshold Amount** has the meaning given in clause 9.7(d)(ii).

**Trigger Event** means Trigger Event 1, Trigger Event 2 or Trigger Event 3.

**Trigger Event 1** means the circumstance where the State or a Permitted Transferee enters into a binding agreement to assign or otherwise transfer (in whole or in part) to a third party its rights and obligations under the Capital Commitment Deed and its rights under clauses 4 to 8 of this deed.

**Trigger Event 2** means the circumstance where after Subscription Completion the State or a Permitted Transferee enters into a binding agreement to Dispose (in whole or in part) of any of the Stapled Securities it holds to a third party at any time prior to [REDACTED].

**Trigger Event 3** means the circumstance where the State or a Permitted Transferee holds any Stapled Securities or [REDACTED].

**Trustee Party** means each of:

- (a) AMP Investment Services Pty Limited;
- (b) AMP Capital Investors Limited; and
- (c) RBS Funds Management (Australia) Limited.

**Unit** means a fully paid unit in the Holding Trust.

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

**Upside Payment Amount** means the amount calculated in accordance with clause 9.6(d).

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

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
  - (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a replacement or an additional trustee;
  - (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
  - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
  - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (j) **includes** in any form is not a word of limitation;
  - (k) a reference to **\$** or **dollar** is to Australian currency; and
  - (l) a reference to time is a reference to Sydney, New South Wales, Australia time.

## 1.3 Performance

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

#### **1.4 Reasonable endeavours**

Any provision of this deed which requires a party to use reasonable endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person; or
- (b) to commence any legal action or proceeding against any person,

except where that provision expressly specifies otherwise.

#### **1.5 The State's delegate**

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

#### **1.6 Notice of Appointment**

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

#### **1.7 Appointees of State Delegate**

- (a) Each State Delegate may:
  - (i) by notice to each other party to this deed, appoint persons to exercise any of the functions of the State Delegate under the Restructure Agreements, or any of them;

- (ii) not appoint more than one person to exercise a specific function at any one time; and
- (iii) revoke any appointment under clause 1.7(a) by notice to each other party to this deed.

(b) All references to the State Delegate include a reference to an appointee under this clause 1.7.

## 1.8 State entities

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

## 1.9 State Act

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

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## 2. Restructure Effective Time

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

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## 3. Conditions precedent

### 3.1 Conditions

The obligations of the parties under clauses 4, 5 and 9 are subject to each of the Conditions in the Capital Commitment Deed having been either satisfied or waived in accordance with clause 3.4 of the Capital Commitment Deed.

### 3.2 Failure of Conditions

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



incapable of satisfaction provided that this termination right may only be exercised by the State within 60 Business Days after the end of the Waiver Period or that termination right is otherwise irrevocably waived in respect of the fact, matter or circumstance that gave rise to the termination right.

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## **4. Sale of Equity Securities**

### **4.1 Sale and purchase**

Subject to clause 3.1, on Equity Security Completion, each Equity Security Holder must sell and the State must buy all of the Equity Securities held by the relevant Equity Security Holder for the aggregate consideration of the payment by the State to the relevant Equity Security Holder of \$1.00 and the right to be paid the Upside Payment Amount (if any) in accordance with and subject to clause 9.

### **4.2 Completion of sale**

Equity Security Completion must take place contemporaneously at the date, time and place of Subscription Completion under the Capital Commitment Deed (**Equity Security Completion Date**).

### **4.3 Completion obligations**

On the Equity Security Completion Date:

- (a) each Equity Security Holder must sell and the State must buy all of the Equity Securities held by the relevant Equity Security Holders free from all Encumbrances;
- (b) each Equity Security Holder must deliver to the State completed transfers of all of the Equity Securities held by the relevant Equity Security Holder duly executed by that Equity Security Holder as transferor;
- (c) each Equity Security Holder must deliver to the State a notice irrevocably appointing it as the relevant Equity Security Holders' proxy in respect of all of the Equity Securities held by that Equity Security Holder until those Equity Securities are registered in the name of the State; and
- (d) the State must pay to each Equity Security Holder \$1.00.

### **4.4 Title and risk**

Subject to clause 6, legal and beneficial ownership of and risk in the Equity Securities held by the relevant Equity Security Holders will pass to the State free from any Encumbrance on performance of the parties' obligations under clause 4.3.

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## **5. Sale of Notes**

### **5.1 Sale and purchase**

Subject to clause 3.1, on Note Completion, each Note Holder must sell and the State must buy all of the Notes held by the relevant Note Holder for the aggregate consideration of the payment by the State to the relevant Note Holder of \$1.00 and the right to be paid the Upside Payment Amount (if any) in accordance with and subject to clause 9.

## **5.2 Completion of sale**

Note Completion must take place contemporaneously at the date, time and place of Subscription Completion under the Capital Commitment Deed (**Note Completion Date**).

## **5.3 Completion obligations**

On the Note Completion Date:

- (a) each Note Holder must sell and the State must buy all of the Notes held by the relevant Note Holders free from all Encumbrances;
- (b) each Note Holder must deliver to the State completed transfers of all of the Notes held by the relevant Note Holder duly executed by that Note Holder as transferor;
- (c) each Note Holder must deliver to the State a notice irrevocably appointing it as the relevant Note Holders' proxy in respect of all of the Notes held by that Note Holder until those Notes are registered in the name of the State;
- (d) the State must pay to each Note Holder \$1.00; and
- (e) the State must deliver a duly executed Noteholder Deed Poll.

## **5.4 Title and risk**

Subject to clause 6, legal and beneficial ownership of and risk in the Notes held by the relevant Note Holders will pass to the State free from any Encumbrance on performance of the parties' obligations under clause 5.3.

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## **6. Interdependence**

- (a) The obligations of the parties under clauses 4.3 and 5.3 of this deed and the obligations of the relevant parties under clauses 6.2 to 6.9 of the Capital Commitment Deed are interdependent and must be performed, as nearly as possible, simultaneously.
- (b) If:
  - (i) any obligation specified in clauses 4.3 and clause 5.3 of this deed is not performed on or before the relevant Equity Security Completion Date or Note Completion Date (as the case may be); or
  - (ii) any obligation specified in clauses 6.2 to 6.9 of the Capital Commitment Deed is not performed on or before the date of Subscription Completion,then, without limiting any other rights of the parties, completion of the sale and purchase of the relevant Equity Securities and Notes is taken not to have occurred and any document delivered, or payment made, under clauses 4.3 and 5.3 must promptly (and in any event by no later than 2 Business Days) be returned to the party that delivered it or paid it.

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## **7. Waivers and other matters**

### **7.1 Waivers**

Each Equity Security Holder and each Note Holder hereby waives compliance with:

- (a) clause 11 of the Unitholders Agreement in respect of the issue of Subscription Securities to the State in accordance with clauses 5 and 6 of the Capital Commitment Deed;
- (b) clause 12 of the Unitholders Agreement in respect of the transfer of Equity Securities and Notes to the State in accordance with clauses 4 and 5 of this deed; and
- (c) clause 6.2 of the Unitholders Agreement in respect of:
  - (i) the issue of Subscription Securities to the State in accordance with clauses 5 and 6 of the Capital Commitment Deed; and
  - (ii) the issue of units in the Operating Trust and the issue of shares in the Operating Company to the Holding Company (as trustee for the Holding Trust) in accordance with clause 6.4 of the Capital Commitment Deed.

## **7.2 Amendment of constitutions and trust deeds**

On the Subscription Funding Date, subject to the consent of the Creditors under the Debt Financing Documents being obtained, the Equity Security Holders must pass a Special Resolution as shareholders of the Holding Company (but only in respect of the constitution for the Holding Company referred to in paragraph (a)(i)) and a Unitholders Super Majority Decision as unit holders of the Holding Trust:

- (a) to adopt, with effect on and from Subscription Completion:
  - (i) a new constitution for the Holding Company;
  - (ii) a new constitution for the Operating Company; and
  - (iii) a new constitution for the Finance Company; and
- (b) to approve the amendments of the Trust Deed (Holding) and Trust Deed (Operating),

in the form provided by the State to Equity Security Holders 10 Business Days prior to the Subscription Funding Date.

## **7.3 Other approvals by Equity Security Holders**

By executing this deed, each Equity Security Holder, as a unit holder of the Holding Trust, is in favour of the following resolutions and the resolutions will be deemed to constitute a Unitholders Super Majority Decision:

- (a) that the amendments to the Deed Poll (Holding) in accordance with the terms of the Amending Deed (Holding) be approved;
- (b) that the amendments to the Deed Poll (Operating) in accordance with the terms of the Amending Deed (Operating) be approved;
- (c) that the change in capital structure of the Holding Company, the Operating Company, the Holding Trust and the Operating Trust arising from giving effect to the terms of this deed be approved;
- (d) that the directions to apply the balance of the Equity Distribution Account set out in the Deed of Amendment (Unitholders Agreement) is a change to the dividend and distribution policy of the Holding Company and is approved;

- (e) that the issue of the Subscription Securities under the terms of the Capital Commitment Deed without any corresponding issue of Units and Shares, and resulting in a change of their relative percentages, be approved; and
- (f) that any other actions:
  - (i) which may require a Unitholders Super Majority Decision; and
  - (ii) which are required to give effect to the Restructure Agreements, be approved.

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## **8. Conduct pending subscription**

### **8.1 No distributions or redemptions**

During the Effective Period, each Equity Security Holder and each Note Holder must not cause the Holding Company to:

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

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

### **8.2 Equity Distribution Account**

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

### **8.3 Waiver of right to interest accrual on Notes**

Notwithstanding clause 3.1 and clause 3.2 of Schedule 1 of the Deed Poll (Holding), each Note Holder hereby waives (and agrees that no consideration will be given in respect of such waiver) any right:

- (a) for the Notes to accrue interest during the Effective Period; and
- (b) to be paid any interest accrued on each Note prior to the Restructure Effective Time.

#### **8.4 Matters requiring the State's consent**

During the Effective Period, each Equity Security Holder and each Note Holder must not cause a Reliance Rail Group Company to:

- (a) undertake any of the matters listed in Schedule 3 and Schedule 4 of the Unitholders Agreement other than to give effect to a matter contemplated in a Restructure Agreement; and
- (b) amend, vary, terminate or waive any rights in respect of clause 3 of the Deed of Amendment (Unitholders Agreement),

without the prior written consent of the State.

#### **8.5 Factors to be considered**

- (a) If a matter requires the State's consent under clause 8.4 and the matter is likely to adversely affect the rights of the State under this deed or the State's interest as a potential future holder of Stapled Securities the State may provide or withhold its consent in its absolute discretion.
- (b) If a matter requires the State's consent under clause 8.4 and the matter does not effect the State as contemplated by clause 8.5(a), the State may not unreasonably withhold its consent.
- (c) If the State is requested to provide a consent under clause 8.4, the State must provide or decline to provide its consent within 10 Business Days of the State receiving the request, except in the case where the matter must be approved by the New South Wales Cabinet prior to the State providing or declining its consent, in which case, the State must provide or decline to provide its consent within the period agreed by the parties.

#### **8.6 Further conditions to transfer of Stapled Securities**

During the Effective Period, each Equity Security Holder and each Note Holder must not Dispose of any Equity Securities or Notes (as the case may be) to a person that is not a Equity Security Holder or Note Holder, unless:

- (a) the proposed Disposal is permitted by clause 12 or clause 14 of the Unitholders Agreement;
- (b) if any Project Document requires a Reliance Rail Group Company to obtain the approval or consent of Rail Corporation New South Wales to the Disposal, that approval or consent is obtained; and
- (c) the proposed transferee has executed and delivered to the State, a Deed of Accession.

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### **9. Equity Upside**

#### **9.1 Arrangements in relation to Disposal or assignment**

Except in the case of a Permitted Transfer, if at any time prior to [REDACTED] the State or a Permitted Transferee proposes to undertake a Trigger Event 1 or a Trigger Event 2 the State or a Permitted Transferee must use its reasonable endeavours at that time to conduct a competitive process in respect of the identification of a proposed third party transferee of the

relevant Stapled Securities or the rights and obligations under the Capital Commitment Deed and the rights under clauses 4 to 8 of this deed in order to maximise value.

## 9.2 Upside Payment Amount on Disposal or assignment

Except in the case of a Permitted Transfer, if at any time prior to [REDACTED] a Trigger Event 1 or a Trigger Event 2 occurs the State must calculate the Upside Payment Amount in accordance with clause 9.6 and, if the Upside Payment Amount is a positive number, make the payments set out in clause 9.7.

## 9.3 Appointment of Independent Valuer if no Disposal

If a Trigger Event 3 occurs, the State must within 20 Business Days of [REDACTED] instruct one of the following firms of accountants (the **Independent Valuer**):

- (a) PricewaterhouseCoopers;
- (b) Deloitte;
- (c) Ernst & Young;
- (d) KPMG; and
- (e) Grant Samuel,

to determine the Fair Market Value of the Stapled Securities in accordance with clauses 9.4 and 9.5 and following the determination of the Fair Market Value the State must calculate the Upside Payment Amount in accordance with clause 9.6 and, if the Upside Payment Amount is a positive number, make the payments set out in clause 9.7.

## 9.4 Determination by Independent Valuer

The parties agree that the Independent Valuer will determine the Fair Market Value of the Stapled Securities in accordance with the following provisions:

- (a) the State must instruct the Independent Valuer to:
  - (i) accept submissions from each Equity Security Holder and each Note Holder within 10 Business Days of the date of appointment of the Independent Valuer;
  - (ii) determine the Fair Market Value of the Stapled Securities, expressed as a price per Stapled Security within the shortest possible time but, in any event, within 30 Business Days after the date of appointment of the Independent Valuer;
  - (iii) determine the Fair Market Value of the Stapled Securities in accordance with the valuation procedures set out in clause 9.5; and
  - (iv) prepare a report to the parties in a form that enables all parties to rely on the report and setting out the results of its valuation, including its determination of the Fair Market Value of the Stapled Securities, expressed as a price per Stapled Security and an explanation of the methodologies used to conduct the valuation;
- (b) the parties must provide the Independent Valuer with any information and assistance reasonably required by the Independent Valuer to make its valuation

including, in the case of the Operating Company, access to the officers and senior employees of the Operating Company;

- (c) the Independent Valuer acts as an independent expert and not as an arbitrator and any decision of the Independent Valuer is final and binding on the parties in the absence of manifest error; and
- (d) the costs of the Independent Valuer are payable by the State.

## 9.5 Valuation procedure

The State must instruct the Independent Valuer to determine the Fair Market Value of the Stapled Securities:

- (a) in accordance with the following assumptions:
  - (i) that there is an arm's length transaction between a willing but not anxious buyer and a willing but not anxious seller; and
  - (ii) that a reasonable time is available to sell the relevant Stapled Securities in an open market; and
- (b) in accordance with the following valuation factors and information:
  - (i) the Reliance Rail Group will be valued on a stand alone basis;
  - (ii) the discounted cash flow valuation methodology applying commercial discount rates applicable in the market at the time;
  - (iii) applying forecast cashflows from the most recent Reliance Rail Group budget as endorsed by the relevant Reliance Rail Group boards of directors; and
  - (iv) applying forecast cashflows from the updated Reliance Rail Group corporate financial model updated for actuals to the date of instruction.

## 9.6 Calculation of Upside Payment Amount

- (a) If a Trigger Event occurs the State must calculate the amount of the Upside Payment Amount (if any) in accordance with this clause 9.6.
- (b) Firstly, the State must calculate the Profit Amount received by the State following the occurrence of the Trigger Event in accordance with the formula in clause 1.1 that is applicable to the relevant Trigger Event.
- (c) Secondly, the State must deduct from the Profit Amount calculated in accordance with clause 9.6(b), the amount (if any) payable by the State to the Contributor in accordance with clause 4.4 of the Capital Commitment Deed (**Adjusted Profit Amount**).
- (d) Thirdly, where the Adjusted Profit Amount is an amount equal to or more than the amount specified in the column of the table below titled "Lower Band Amount" and less than the amount specified in the column of the table below titled "Upper Band Amount", the State must calculate the amount specified in the corresponding row in the column of the table below titled "Upside Payment Amount" (the **Upside Payment Amount**).

Row	Lower Band Amount	Upper Band Amount	Upside Payment Amount
1.	\$ [REDACTED]	\$ [REDACTED] (as adjusted in accordance with clause 9.6(f)(i))	[REDACTED] of the Adjusted Profit Amount
2.	\$ [REDACTED] (as adjusted in accordance with clause 9.6(f)(i))	\$ [REDACTED] (as adjusted in accordance with clause 9.6(f)(i))	The sum of: (a) [REDACTED] of the Upper Band Amount in Row 1; and (b) [REDACTED] of the Adjusted Profit Amount that exceeds the Upper Band Amount in Row 1.
3.	\$ [REDACTED] (as adjusted in accordance with clause 9.6(f)(i))	-	The sum of: (a) [REDACTED] of the Upper Band Amount in Row 1; (b) [REDACTED] of the amount that is equal to the Upper Band Amount in Row 2 less the Lower Band amount in Row 2; and (c) [REDACTED] of the Adjusted Profit Amount that exceeds the Upper Band Amount in Row 2.

- (e) Fourthly, if the Upside Payment Amount is a positive number, this amount must be paid by the State to the Note Holders or the Equity Security Holders (as the case may be) in accordance with clause 9.7.
- (f) If more than one Trigger Event occurs, the State must undertake the same process contemplated under clauses 9.6(b) to 9.6(e) subject to the following amendments:
- (i) if one or more Trigger Events has occurred prior to the relevant Trigger Event, the aggregate of the Adjusted Profit Amounts calculated under clauses 9.6(b) and 9.6(c) will be deducted from the amounts specified in the columns of the table above titled "Lower Band Amount" and "Upper Band Amount" except in the case where the deduction results in the relevant amounts being a negative number, in which case, the relevant amounts will be specified as \$0; and
  - (ii) if, as a result of the adjustments in clause 9.6(f)(i), the Upside Payment Amount is a negative number, the Upside Payment Amount is \$0 and the State is not obliged to make any payment to the Note Holders or the Equity Security Holders (as the case may be).



## 9.7 Payment of Upside Payment Amount

Within 20 Business Days of:

- (a) in the case of Trigger Event 1 or Trigger Event 2, the State receiving the consideration in respect of the relevant Trigger Event; or
- (b) in the case of Trigger Event 3, receiving the Independent Valuer's determination of the Fair Market Value of the Stapled Securities,

the State must, subject to clause 9.8, pay the Upside Payment Amount to the relevant Note Holders or Equity Security Holders (as the case may be) in the following order of priority:

- (c) where the aggregate of Upside Payment Amounts is an amount equal to or more than [REDACTED] and less than [REDACTED], a proportion of the Upside Payment Amount to each of the AMP - IEF Investor Group, the AMP - GIF Investor Group, AMP - REST Investor Group, the IPP Investor Group and the RBS Investor Group that is equal to the relevant Investor Group's Equity Proportion;
- (d) where the aggregate of the Upside Payment Amounts is an amount equal to or more than [REDACTED] and less than:
  - (i) where the Operating Company (as trustee of the Operating Trust) has not applied the MDA Retained Amount, or any portion thereof, in accordance with clause 2.1 of the RSM Contractor Undertakings, [REDACTED]; or
  - (ii) where the Operating Company (as trustee of the Operating Trust) has applied the MDA Retained Amount, or part thereof, in accordance with clause 2.1 of the RSM Contractor Undertakings Deed, the sum of (A) [REDACTED] plus (B) the MDA Retained Amount, or part thereof, that has been so applied (in total, the **Threshold Amount**), [REDACTED] of the Upside Payment Amount that exceeds [REDACTED] and is less than [REDACTED] or, to the extent that the MDA Retained Amount, or part thereof, has been applied in accordance with clause 2.1 of the RSM Contractor Undertakings Deed, the Threshold Amount, to the Dow Investor Group; and
- (e) where the aggregate of the Upside Payment Amounts is an amount equal to or more than [REDACTED], if greater, the Threshold Amount, a proportion of the Upside Payment Amount that exceeds such amount to each of the AMP - IEF Investor Group, the AMP - GIF Investor Group, the AMP - REST Investor Group, the Dow Investor Group, the IPP Investor Group and the RBS Investor Group that is equal to the relevant Equity Investor Group's Equity Proportion.

## 9.8 Payment as between Note Holders and Equity Security Holders

If a proportion of an Upside Payment Amount is payable by the State to an Investor Group in accordance with clause 9.7 (**Proportional Upside Payment Amount**), the State must pay the Proportional Upside Payment Amount as between the Note Holder and the Equity Security Holder that comprise the relevant Investor Group in the following order of priority:

- (a) where the aggregate of Proportional Upside Payment Amounts is an amount equal to or more than \$1 and less than or equal to the Capped Amount, [REDACTED]% of such amount up to the Capped Amount to the Note Holder in the relevant Investor Group; and

- (b) where the aggregate of Proportional Upside Payment Amounts is an amount more than the Capped Amount, [REDACTED] % of the amount that exceeds the Capped Amount to the Equity Holder in the relevant Investor Group.

## 9.9 Calculations made by the State

Any calculations required to be performed under clause 9.6, clause 9.7 or clause 9.8 will be undertaken by the State and will be final and binding on the parties in the absence of manifest error.

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## 10. Power of Attorney

In consideration of each of the parties entering into this agreement and for other valuable consideration, each Equity Security Holder and each Note Holder irrevocably appoints any State Delegate as its attorney (**Attorney**) from the date on which that Equity Security Holder or that Note Holder (as the case may be) is in breach of any its obligations to complete any sale or transaction under clause 4 or clause 5 and for so long as that breach continues. During that term of that appointment:

- (a) the Attorney may do in the name of the Equity Security Holder or the Note Holder (as the case may be) and on its behalf everything necessary or expedient in the Attorney's sole discretion to complete any sale or transaction contemplated by clause 4 or clause 5 including:
- (i) the power to execute all necessary documents to complete any sale or transaction contemplated by clause 4 or clause 5; and
  - (ii) exercise any rights attaching to the relevant Equity Security Holder's Equity Securities or Note Holder's Notes (as the case may be) in connection with any sale or transaction contemplated by clause 4 or clause 5 including rights to appoint a proxy or representative and voting rights; and
- (b) the Equity Security Holder or the Note Holder (as the case may be) declares that all acts and things done by the Attorney in exercising powers under this power of attorney are as good and valid as if they had been done by the Equity Security Holder or the Note Holder (as the case may be) and agrees to ratify and confirm whatever the Attorney does in exercising powers under this power of attorney.

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## 11. Assignment

### 11.1 Permitted assignment without consent

- (a) At any time after the Restructure Effective Time, the State may assign or otherwise transfer any of its rights under this deed to a Permitted Transferee without the consent of each other party, so long as it also assigns or transfers its rights under the Capital Commitment Deed to the same person and provided in any event that it complies with the other provisions of clause 11 of the Capital Commitment Deed in respect of such assignment or transfer.
- (b) At any time after [REDACTED], the State or a Permitted Transferee may assign or otherwise transfer any of its rights under this deed to a third party without the consent of each other party, except in the case where the proposed transferee is a Direct Competitor of [REDACTED] at the time of transfer (in which case the prior consent of each other party must be obtained) and it also assigns or transfers its rights under the Capital Commitment Deed to the same person and provided in any event that it

complies with the other provisions of clause 11 of the Capital Commitment Deed in respect of such assignment or transfer.

### **11.2 No other assignment without consent**

Except as permitted under clauses 8.6, 11.1(a) or 11.1(b), a party cannot assign or otherwise transfer any of its rights under this deed to a third party without the prior consent of all parties to this deed.

### **11.3 State guarantee**

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

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## **12. Payments**

### **12.1 Direction**

Any reference in this deed to a payment to any party includes payment to another person at the direction of that party.

### **12.2 Method of payment**

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

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

in each case, on or before the due date for payment.

### **12.3 No deduction**

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

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## **13. Representations, warranties and acknowledgements**

### **13.1 By each party generally**

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

### **13.2 By each Trustee Party**

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

### **13.3 Reliance on representations and warranties**

Each party acknowledges that each other party has entered this deed, in reliance on the representations and warranties in this clause 13.

### **13.4 When representations made and warranties given**

Each of the representations and warranties given under this clause 13 is given as at the date of this deed and as at the time immediately prior to the Subscription Funding Date.

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## **14. Limitations of liability**

- (a) Each Trustee Party enters into this deed in its capacity as trustee of the Relevant Trust.
- (b) Each Trustee Party enters into this deed only in its capacity as trustee of the Relevant Trust and in no other capacity. A liability arising under or in connection with this deed is limited, and can be enforced against each Trustee Party only, to the extent to which it can be satisfied out of the assets of the Relevant Trust out of which each Trustee Party is actually indemnified for the liability. This limitation of each Trustee Party's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the relevant party in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) No party may sue a Trustee Party in any capacity other than as trustee of the Relevant Trust, including to seek the appointment of a receiver (except in relation to property of the Relevant Trust), a liquidator, an administrator, or any similar person to the trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee Party (except in relation to property of the Relevant Trust).
- (d) The provisions of this clause 14 do not apply to any obligation or liability of a Trustee Party to the extent that it is not satisfied because under the agreement governing the Relevant Trust or by operation of law there is a reduction in the extent of the Trustee Party's indemnification out of the Relevant Trust, as a result of the Trustee Party's fraud, negligence or breach of trust.
- (b) No attorney, agent, receiver or receiver and manager appointed in accordance with this deed has authority to act on behalf of any Trustee Party in a way which exposes the Trustee Party to any personal liability, and no act or omission of any such person will be considered fraud, negligence or breach of trust of the relevant party for the purposes of clause 14(d).

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## **15. Termination**

### **15.1 Termination for failure to satisfy Conditions**

This deed may be terminated in accordance with clause 3.2.

### **15.2 Effect of termination**

If this deed is terminated then:

- (a) the provisions of this deed will cease to have effect except for the provisions of this clause 15, clauses 1, 16, 17 and 18 any other clause which is expressed to survive termination of this deed; and

- (b) each party retains the rights it has against the others in respect of any breach of this deed occurring before termination.

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## **16. GST**

### **16.1 Interpretation**

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 16 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.

### **16.2 Reimbursements and similar payments**

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

### **16.3 GST payable**

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

### **16.4 Variation to GST payable**

If the GST payable in relation to a supply made under or in connection with this deed or any other Restructure Agreement varies from the additional amount paid by the Recipient under clause 16.3 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any ruling, advice, document or other information received by the Supplier from the Australian Taxation Office in relation to any supply made under this deed or any other Restructure Agreement will be conclusive as to the GST payable in relation to that supply. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3.

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## **17. Notices**

### **17.1 How notice to be given**

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

- (a) may be given by personal service, post or facsimile;

- (b) must be in writing;
- (c) must be addressed to each party as follows or in accordance with the details set out in the fourth column entitled 'Notices' in Schedule 1:

**State**

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

- (d) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (e) must be delivered by hand or posted by prepaid post to the address or sent by fax to the number of the addressee in accordance with clause 17.1(b).

## **17.2 When notice taken to be received**

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

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery,

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

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## **18. General**

### **18.1 Amendments**

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

### **18.2 Consents**

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

### **18.3 Costs**

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

- (a) negotiating, preparing, executing and performing each Restructure Agreement; and

- (b) any subsequent consent, agreement, approval, waiver or amendment relating to any Restructure Agreement.

#### **18.4 Counterparts**

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

#### **18.5 Further acts and documents**

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

#### **18.6 No merger**

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

#### **18.7 Severance**

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

#### **18.8 Waivers**

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

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed;
- (b) a waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

#### **18.9 Governing law and jurisdiction**

This deed is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 18.9.

## Schedule 1 Security Holders

### Part A - Equity Security Holders

Name	Address	Defined Term	Notices
IEF Reliance Rail Pty Limited ACN 122 695 970	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - IEF Co	Attention: Company Secretary  C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000  Fax: +61 2 9257 7178
GIF Reliance Rail Pty Limited ACN 122 696 002	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - GIF Co	Attention: Company Secretary  C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000  Fax: +61 2 9257 7178
REST Reliance Rail Pty Limited ACN 122 695 934	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - REST Co	Attention: Company Secretary  C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000  Fax: +61 2 9257 7178
Downer PPP Investments Pty Ltd ACN 122 730 152	Triniti Business Campus, 39 Delhi Road, North Ryde, 2113	DOW Co	Attention: Company Secretary  Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113  Fax: +61 2 9637 6783
International Public Partnerships GP Limited acting in its capacity as general partner of International Public Partnerships L.P.	Two London Bridge London SE1 9RA United Kingdom	IPP	Attention: Company Secretary  Two London Bridge London SE1 9RA United Kingdom Fax: +44 20 7203 7301
RBS Rail Holdings (Australia) Pty Ltd ACN 120 875 765	Level 5, RBS Tower, 88 Phillip Street, Sydney NSW 2000	RBS Co	Attention: Company Secretary  Level 5, RBS Tower, 88 Phillip Street, Sydney



			NSW 2000 Fax: +61 2 9259 5425
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**Part B - Note Holders**

<b>Name</b>	<b>Address</b>	<b>Defined Term</b>	<b>Notices</b>
AMP Investment Services Pty Limited ABN 71 063 986 989 as trustee of the AMP Capital Infrastructure Equity Fund	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - IEF	Attention: Company Secretary  C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000  Fax: +61 2 9257 7178
AMP Investment Services Pty Limited ABN 71 063 986 989 as trustee of the AMP Capital Global Infrastructure Fund No. 2	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - GIF	Attention: Company Secretary  C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000  Fax: +61 2 9257 7178
AMP Capital Investors Limited ABN 59 001 777 591 as trustee of the REST Infrastructure Fund	C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000	AMP - REST	Attention: Company Secretary  C/- Level 24, AMP Building, 33 Alfred Street, Sydney NSW 2000  Fax: +61 2 9257 7178
Downer EDI Limited ABN 97 003 872 848	Triniti Business Campus, 39 Delhi Road, North Ryde, 2113	DOW	Attention: Company Secretary  Triniti Business Campus, 39 Delhi Road, North Ryde, 2113  Fax: +61 2 9637 6783
International Public Partnerships GP Limited acting in its capacity as general partner of International Public Partnerships L.P.	Two London Bridge London SE1 9RA United Kingdom	IPP	Attention: Company Secretary  Two London Bridge London SE1 9RA United Kingdom Fax: +44 20 7203 7301
RBS Funds Management (Australia) Limited ACN	Level 5, RBS Tower, 88 Phillip Street, Sydney	RBS	Attention: Company

120 451 988 as trustee of the RBS Rail Investment Trust	NSW 2000		Secretary Level 5, RBS Tower, 88 Phillip Street, Sydney NSW 2000 Fax: +61 2 9259 5425
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## Schedule 2 Mutual representations and warranties

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### 1. Part 1: Mutual representations and warranties

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

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### 2. Part 2: Trustee party representations and warranties

- (a) **(Only trustee)** The Trustee Party is the only trustee of the Relevant Trust.
- (b) **(No action to remove)** No action has been taken or proposed to remove the Trustee Party as trustee of the Relevant Trust.

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

Executed as a deed.

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

193m  
Signature of witness

[Signature]  
Signature of The Honourable Michael Baird MP, Treasurer

KLAY DAVID BROWN  
Full name of witness

**Signed sealed and delivered** for and on behalf of **IEF Reliance Rail Pty Limited ACN 122 695 970** by its attorneys under a Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

[Signature]  
Signature of Attorney

JOHN R. SCHEMBRI  
Name of Attorney in full

[Signature]  
Signature of Witness

[Signature]  
Signature of Attorney

Warre Smith  
Name of Witness in full

[Signature]  
Name of Attorney in full

**Signed sealed and delivered** for and on behalf of **GIF Reliance Rail Pty Limited ACN 122 696 002** by its attorneys under a Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

[Signature]  
Signature of Attorney

JOHN R. SCHEMBRI  
Name of Attorney in full

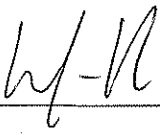
[Signature]  
Signature of Witness

[Signature]  
Signature of Attorney

Warre Smith  
Name of Witness in full

[Signature]  
Name of Attorney in full

**Signed sealed and delivered** for and on behalf of **REST Reliance Rail Pty Limited ACN 122 695 934** by its attorneys under a Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

  
\_\_\_\_\_  
Signature of Witness

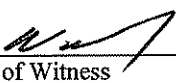
*Warre Smith*  
\_\_\_\_\_  
Name of Witness in full

**Executed by Downer PPP Investments Pty Ltd ACN 122 730 152** in accordance with section 127 of the Corporations Act 2001 (Cth):


\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

**Signed sealed and delivered** for and on behalf of **International Public Partnerships GP Limited acting in its capacity as general partner of International Public Partnerships L.P.** by its attorney under a Power of Attorney dated 31 January 2012, 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

*NICHOLAS FEINBERG*  
\_\_\_\_\_  
Name of Witness in full

  
\_\_\_\_\_  
Signature of Attorney


*HEINR SCHEMBERG*  
\_\_\_\_\_  
Name of Attorney in full

  
\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

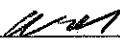
\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director

  
\_\_\_\_\_  
Signature of Attorney

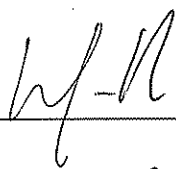
*Nathan Jackson*  
\_\_\_\_\_  
Name of Attorney in full

**Signed sealed and delivered** for and on behalf of **RBS Rail Holdings (Australia) Pty Ltd ACN 120 875 765** by its attorneys under a Power of Attorney dated 24 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

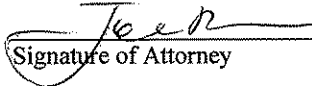
  
\_\_\_\_\_  
Signature of Witness

NICHOLAS FEINBERG  
\_\_\_\_\_  
Name of Witness in full

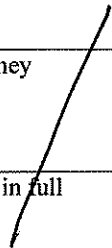
**Signed sealed and delivered** for and on behalf of **AMP Investment Services Pty Limited ABN 71 063 986 989 as trustee of the AMP Capital Infrastructure Equity Fund** by its attorneys under a Sub-Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

  
\_\_\_\_\_  
Signature of Witness


Warre Smith  
\_\_\_\_\_  
Name of Witness in full

  
\_\_\_\_\_  
Signature of Attorney


JOHN McWANE  
\_\_\_\_\_  
Name of Attorney in full

  
\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

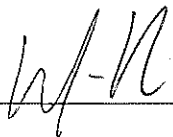
  
\_\_\_\_\_  
Signature of Attorney

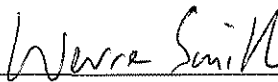
JOHN R SCHEMBR  
\_\_\_\_\_  
Name of Attorney in full

  
\_\_\_\_\_  
Signature of Attorney

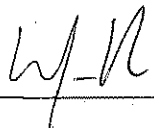
\_\_\_\_\_  
Name of Attorney in full

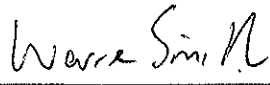
**Signed sealed and delivered** for and on behalf of **AMP Investment Services Pty Limited ABN 71 063 986 989 as trustee of the AMP Capital Global Infrastructure Fund No. 2** by its attorneys under a Sub-Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness in full

**Signed sealed and delivered** for and on behalf of **AMP Capital Investors Limited ABN 59 001 777 591 as trustee of the REST Infrastructure Fund** by its attorneys under a Sub-Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:


  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness in full

**Executed by Downer EDI Limited ABN 97 003 872 848** in accordance with section 127 of the Corporations Act 2001 (Cth):


\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

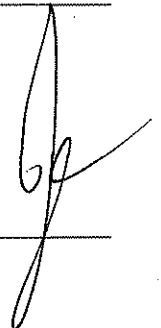
  
\_\_\_\_\_  
Signature of Attorney

**JOHN R SCHEMBRI**

\_\_\_\_\_  
Name of Attorney in full


  
\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

  
\_\_\_\_\_  
Signature of Attorney

**JOHN R SCHEMBRI**

\_\_\_\_\_  
Name of Attorney in full

  
\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director



**Signed sealed and delivered** for and on behalf of **RBS Funds Management (Australia) Limited ACN 120 451 988 as trustee of the RBS Rail Investment (Australia) Trust** by its attorneys under a Power of Attorney dated 24 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

*[Handwritten Signature]*  
Signature of Witness

NICHOLAS FEINBERG  
Name of Witness in full

*[Handwritten Signature]*  
Signature of Attorney

JOHN MCNAMEE  
Name of Attorney in full

*[Handwritten Signature]*  
Signature of Attorney

Name of Attorney in full

**Signed sealed and delivered** for and on behalf of **REST Reliance Rail Pty Limited ACN 122 695 934** by its attorneys under a Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Name of Attorney in full

**Executed by Downer PPP Investments Pty Ltd ACN 122 730 152** in accordance with section 127 of the Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Signature of director

*Kevin John Fletcher*  
\_\_\_\_\_  
Full name of director

  
\_\_\_\_\_  
Signature of company secretary/director

*Peter John Tompkins*  
\_\_\_\_\_  
Full name of company secretary/director

**Signed sealed and delivered** for and on behalf of **International Public Partnerships GP Limited acting in its capacity as general partner of International Public Partnerships L.P.** by its attorney under a Power of Attorney dated 31 January 2012, 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 Attorney

\_\_\_\_\_  
Name of Attorney in full

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**Signed sealed and delivered** for and on behalf of **AMP Investment Services Pty Limited ABN 71 063 986 989 as trustee of the AMP Capital Global Infrastructure Fund No. 2** by its attorneys under a Sub-Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

**Signed sealed and delivered** for and on behalf of **AMP Capital Investors Limited ABN 59 001 777 591 as trustee of the REST Infrastructure Fund** by its attorneys under a Sub-Power of Attorney dated 25 January 2012, and the attorneys declare that the attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney in full

**Executed by Downer EDI Limited ABN 97 003 872 848** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

GRANT ANTHONY FENN  
Full name of director

\_\_\_\_\_  
Signature of company secretary/director

Peter John Tompkins  
Full name of company secretary/director

## Annexure A - Deed of Accession

THIS DEED is made on the *[insert day]* day of *[insert month]* *[insert year]* between:

### PARTIES

*[Insert Name]* ACN *[Insert ACN]* (Transferor)

*[Insert Name]* ACN *[Insert ACN]* (Transferee)

### BACKGROUND

- A. This Deed of Accession (**Deed**) is supplemental to the Existing Investors Side Deed between the Equity Security Holders, the Note Holders and the State (**Existing Investors Side Deed**).
- B. The Transferor wishes to sell to the Transferee *[insert number and type of securities]* subject to the Transferee executing this deed.

### OPERATIVE PROVISIONS

1. Expressions defined in the Existing Investors Side Deed shall (unless the context requires otherwise) have the same meaning when used in this deed.
2. The Transferee:
  - (a) confirms that it has been supplied with a copy of the Existing Investors Side Deed; and
  - (b) undertakes to and covenants with all parties to the Existing Investors Side Deed (including any party who has entered into a Deed of Accession) to comply with the provisions of and to perform all the relevant obligations arising under the Existing Investors Side Deed so far as they become due to be observed or to be performed on or after the date of this Deed, as if the Transferee had been an original party to the Existing Investors Side Deed.
3. For the avoidance of any doubt, the Transferee shall not be entitled to any amount which has fallen due for payment to the Transferor before the date of this deed and shall not be liable in respect of any breach or non-performance of the obligations of the Transferor pursuant to the Existing Investors Side Deed before the date of this deed.
4. The Transferor shall remain entitled to each amount which has fallen due for payment to the Transferor before the date of this deed and shall not be released from any liability in respect of any breach or non-performance of the obligations of the Transferor pursuant to the Existing Investors Side Deed before the date of this deed.
5. The Transferor appoints the attorneys appointed under the Existing Investors Side Deed as its attorneys in relation to this deed and in accordance with the Existing Investors Side Deed.

### WARRANTIES AND REPRESENTATIONS

6. By the Transferee generally  
The Transferee represents and warrants to each other party that:

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

7. By the Transferee as trustee

If the Transferee enters into this deed in its capacity as trustee of a trust (the **Trust**), the Transferee represents and warrants to each other party that:

- (a) **(Only trustee )** The Transferee is the only trustee of the Trust.
- (b) **(No action to remove)** No action has been taken or proposed to remove the Transferee as trustee of the Trust.

- (c) **(Copy of Trust Deed)** A true copy of the trust deed of the Trust and other documents relating to the Trust have been provided to the Intercreditor Agent and disclose all the terms of the Trust.
- (d) **(Power)** The Transferee has power under the trust deed of the Trust to enter into and comply with its obligations under the Restructure Agreements to which it is a party.
- (e) **(Authorisations)** The Transferee has in full force and effect the authorisations necessary to enter into the Restructure Agreements to which it is a party, perform obligations under them and allow them to be enforced (including under the trust deed of the Trust and its constitution (if any)).
- (f) **(Right to be indemnified)** The Transferee has a right to be fully indemnified out of the applicable trust fund in respect of obligations incurred by it under the Restructure Agreements to which it is a party.
- (g) **(Trust Fund sufficient)** The applicable trust fund is sufficient to satisfy that right of indemnity and all other obligations in respect of which the Transferee has a right to be indemnified out of the trust fund.
- (h) **(No default)** The Transferee is not in default under the trust deed of the Trust.
- (i) **(No action to terminate)** No action has been taken or proposed to terminate the applicable Trust.
- (j) **(Compliance with obligations)** The Transferee and its directors and other officers have complied with their obligations in connection with the Trust.
- (k) **(Present entitlements)** The beneficiaries of the Trust are, and will remain, presently entitled to all of the distributable income of the Trust.

#### CONTACT DETAILS

- 8. The address of the Transferee for the purposes of the Existing Investors Side Deed will be as follows:  
  
*[insert address]*
- 9. This deed will be governed by and construed in accordance with the laws of New South Wales.

**EXECUTED** as a deed.

**Signed, sealed and delivered** for the  
Transferor **[insert name and ACN of the  
Transferor]** under a power of attorney dated in  
the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

**Signed, sealed and delivered** for the  
Transferee **[insert name and ACN of the  
Transferee]** under a power of attorney dated in  
the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of attorney who declares that the attorney  
has not received any notice of the revocation of the  
power of attorney

\_\_\_\_\_  
Full name of attorney

\_\_\_\_\_  
Signature of attorney who declares that the attorney  
has not received any notice of the revocation of the  
power of attorney

\_\_\_\_\_  
Full name of attorney