

CLAYTON UTZ

Financial Guarantors' Undertakings Deed

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

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

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

Reliance Rail Finance Pty Limited ACN 120 380 805

FGIC UK Limited

Syncora Guarantee Inc

The Clayton Utz contacts for this document are
Angus Foley on + 61 2 9353 4000

Clayton Utz
Lawyers
Level 15 1 Bligh Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T +61 2 9353 4000 F +61 2 8220 6700

www.claytonutz.com

Our reference 80054519

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Financial Guarantors' Undertakings Deed dated 3 FEBRUARY ~~January~~ 2012

Parties

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

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

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

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

FGIC UK Limited, a company incorporated with limited liability under the laws of England and Wales (registered number 5030956) of c/o Mazars LLP London, Tower Bridge House, St Katherine's Way, London E1W-1DD United Kingdom (**FGIC**)

Syncora Guarantee Inc., of 135 West 50th Street, 20th Floor, New York, New York 10019 United States of America (**Syncora**)

Background

- A. The parties have agreed to certain financial restructuring transactions in respect of the Project and the Financial Guarantors agreed to enter into the various undertakings set out in and subject to the terms of this deed.
- B. In consideration of entering into this deed, the Financial Guarantors will be paid the amounts set out in this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Accrued Fees means the fees payable to each of FGIC and Syncora pursuant to clause 6.2.

Assigned Fees means the FGIC Assigned Fees and the Syncora Assigned Fees.

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, New York and London.

Capital Commitment Deed has the meaning in the Restructure Co-Ordination Deed.

Claim means a claim or demand for payment pursuant to or under a Financial Guarantee.

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.

Condition 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.

Controlling Party has the meaning given in the Senior Intercreditor Deed.

Corporations Act means the Corporations Act 2001 (Cth).

Creditor has the meaning given in the Common Terms Deed.

Debt has the meaning given in the Senior Intercreditor Deed.

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

Deed of Release has the meaning given in the Restructure Co-Ordination Deed.

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

DSCR has the meaning given in the Common Terms Deed.

Effective Period has the meaning given in the Capital Commitment Deed.

Encumbrance has the meaning given in the Common Terms Deed.

Enforcement Action has the meaning given in the Common Terms Deed.

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

Event of Default means any event of default described in clause 7 of the Common Terms Deed.

FGIC Assigned Fees means all fees payable by the Operating Company on behalf of the Operating Trust under paragraph 1 of the FGIC Guarantee Fee Letters, as amended by this deed.

FGIC Financial Guarantees means the Financial Guarantees provided by FGIC pursuant to the Debt Financing Documents as listed in Schedule 1 Part A or any of them.

FGIC Guarantee Fee Letters means:

- (a) the FGIC Senior Guarantee Fee Letter; and
- (b) the FGIC Junior Senior Guarantee Fee Letter.

FGIC Junior Guarantee Fee Letter means the letter dated 1 December 2006 from FGIC to Operating Company and Finance Company entitled "NSW Rolling Stock PPP - FGIC Junior Financial Guarantee Fee Letter".

FGIC Senior Guarantee Fee Letter means the letter dated 1 December 2006 from FGIC to Operating Company and Finance Company entitled "NSW Rolling Stock PPP - FGIC Senior Financial Guarantee Fee Letter".

FGIC Step Up Fees means:

- (a) the additional "Debt Guarantee Fee" payable by the Operating Company on behalf of the Operating Trust to FGIC under paragraph 1 of the FGIC Senior Guarantee Fee Letter; and
- (b) the additional "Debt Guarantee Fee" and the "Additional Fee" payable by the Operating Company on behalf of the Operating Trust to FGIC under paragraph 1 of the FGIC Junior Guarantee Fee Letters;

in each case as a result of a credit rating lower than BBB (S&P) or Baa2 (Moody's) being assigned to the debt guaranteed under the FGIC Financial Guarantees; and
- (c) the additional "Senior Financial Debt Guarantee Fee" payable by the Operating Company on behalf of the Operating Trust to FGIC under paragraph 1 of the FGIC Senior Guarantee Fee Letter if:
 - (i) the Senior Bonds are not repaid on the Initial Call Date relating thereto; or
 - (ii) the Senior Bank Debt is not repaid on the Scheduled Maturity Date; and
- (d) the "Incremental Fee" payable by the Operating Company on behalf of the Operating Trust to FGIC under paragraph 1 of the FGIC Junior Guarantee Fee Letter.

Financial Guarantee has the meaning given in the Senior Intercreditor Deed and includes each of the guarantees listed in Schedule 1.

Financial Guarantors means each of FGIC and Syncora.

Financial Guarantor Default has the meaning given in the Common Terms Deed.

Financial Guarantor Fee Letters means:

- (a) the FGIC Guarantee Fee Letters; and
- (b) the Syncora Guarantee Fee Letters.

Financial Guarantor Fees means all amounts payable to either Financial Guarantor from any Reliance Rail Group Company including under the Financial Guarantor Fee Letters.

First Refinancing Date has the meaning given in the Capital Commitment Deed.

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).

Initial Call Date has the meaning given in the FGIC Senior Guarantee Fee Letter.

Intercreditor Agent has the meaning given in the Senior Intercreditor Deed.

Material Event of Default means each of the following Events of Default under the Common Terms Deed:

- (a) clause 7.1(a) - failure to pay;
- (b) clause 7.1(c) - entitlement to terminate a Transaction Document;
- (c) clause 7.1(d) - Obligor entitled to terminate a Project Document;
- (d) clause 7.1(e) - Insolvency Event;
- (e) clause 7.1(f) - judgment;
- (f) clause 7.1(h) - expropriation;
- (g) clause 7.1(i) - void Transaction Documents;
- (h) clause 7.1(o) - suspension or abandonment;
- (i) clause 7.1(s) - RailCorp termination notice;
- (j) clause 7.1(z) - Practical Completion;
- (k) clause 7.1(bb) - abandonment; and
- (l) clause 7.1(jj) - RailCorp notice.

Milestone Date means each of the following dates:

- (a) the date on which the Condition specified in clause 3.1(b) "Senior Bank Debt funded" of the Capital Commitment Deed is either satisfied or waived by the State;
- (b) the date on which satisfaction of Condition specified in clause 3.1(c) "Practical Completion of all Train Sets" of the Capital Commitment Deed is either satisfied or waived by the State; and

(c) the date on which Subscription Completion occurs.

Moody's has the meaning given in the Common Terms Deed.

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

Permitted Transferee means, in relation to the State:

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

so long as such body, authority or entity is an agency of the Crown or is otherwise guaranteed by the State pursuant to the terms of the Capital Commitment Deed.

Potential Event of Default has the meaning given in the Common Terms Deed.

Previous FGIC Waiver Letter means the letter dated 31 December 2009 from the Operating Company in its capacity as trustee of the Reliance Rail Trust and the Finance Company to FGIC and the FGIC Waiver Letter Confirmation dated 7 January 2010 from FGIC to the Operating Company in its capacity as trustee of the Reliance Rail Trust and the Finance Company.

Previous Syncora Waiver Letter means the letter dated 31 January 2009 from the Operating Company in its capacity as trustee of the Reliance Rail Trust to Syncora and the Syncora Waiver Letter Confirmation dated 7 January 2010 from Syncora to the Operating Company in its capacity as trustee of the Reliance Rail Trust.

Project has the meaning given in the Project Contract.

Proceeds Account has the meaning given in the Common Terms Deed.

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 Reliance Rail Trust.

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

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

Relevant Trust means:

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

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

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

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, Rail Corporation of NSW, Reliance Rail Holdings Pty Limited in its own right and as trustee of the Reliance Rail Holding Trust, Reliance Rail Pty Limited in its own right and as trustee of the Reliance Rail Trust, Reliance Rail Finance Pty Limited, FGIC UK Limited, Syncora Guarantee Inc, Permanent Custodians Limited, BNY Trust (Australia) Registry Limited, Downer EDI Rail Pty Limited and Hitachi Australia Pty Limited and each Unitholder and each Noteholder of Reliance Rail Holdings Pty Limited.

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

Restructure Fee means the fees payable in accordance with clause 6.1.

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

S&P has the meaning given in the Common Terms Deed.

Scheduled Maturity Date has the meaning given in the FGIC Senior Guarantee Fee Letter.

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

Security Trustee has the meaning given in the Senior Intercreditor Deed.

Senior Bank Debt has the meaning given in the Capital Commitment Deed.

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

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

Senior Debt has the meaning given in the Senior Intercreditor Deed.

Senior Debt Guarantee Fees means:

- (a) in the case of Syncora, the "Senior Guarantee Fee" payable by the Operating Company on behalf of the Operating Trust to Syncora under paragraph 1(a) of the Syncora Senior Guarantee Fee Letter; and
- (b) in the case of FGIC, the "Debt Guarantee Fee" payable by the Operating Company on behalf of the Operating Trust to FGIC under the first bullet point of paragraph 1 of the FGIC Senior Guarantee Fee Letter.

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

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

State Act has the meaning given in clause 1.10.

State Delegate has the meaning given in clause 1.6.

Subscription Amount 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.

Subsidiary has the meaning given in the Corporations Act.

Syncora Assigned Fees means all fees payable by the Operating Company on behalf of the Operating Trust to Syncora under paragraph 1 of the Syncora Guarantee Fee Letters, as amended by this deed.

Syncora Financial Guarantees means the Financial Guarantees provided by Syncora pursuant to the Debt Financing Documents as listed in Schedule 1 Part B or any of them.

Syncora Guarantee Fee Letters means:

- (a) the Syncora Senior Guarantee Fee Letter; and
- (b) the Syncora Junior Guarantee Fee Letter.

Syncora Junior Guarantee Fee Letter the letter dated 1 December 2006 from FGIC to Operating Company and Finance Company entitled "NSW Rolling Stock PPP - Junior Financial Guarantee Fee Letter".

Syncora Senior Guarantee Fee Letter means the letter dated 1 December 2006 from Syncora to Operating Company and Finance Company entitled "NSW Rolling Stock PPP - Senior Financial Guarantee Fee Letter".

Syncora Step Up Fees means:

- (a) the additional "Senior Guarantee Fees" payable by the Operating Company on behalf of the Operating Trust to Syncora under paragraph 1(a) of the Syncora Senior Guarantee Fee Letter; and
- (b) the additional "Junior Guarantee Fees" and "Junior Additional Premium" payable by the Operating Company on behalf of the Operating Trust to Syncora under paragraph 1(a) of the Syncora Junior Guarantee Fee Letter;

in each case as a result of a credit rating lower than BBB (S&P) or Baa2 (Moody's) being assigned to the debt guaranteed under the Syncora Financial Guarantees, and
- (c) the additional Fees payable by the Operating Company on behalf of the Operating Trust to Syncora under paragraph 1(e) of the Syncora Senior Guarantee Fee Letter; and
- (d) the additional "Incremental Guarantee Fees" payable by the Operating Company on behalf of the Operating Trust to Syncora under paragraph 1(a) of the Syncora Junior Guarantee Fee Letter.

Trustee Party means each of:

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

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

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) 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 Obligations several

The obligations of each Financial Guarantor under this deed are several. If one or more of them does not perform an obligation it will not relieve any of the others from any of its obligations under this deed. None of them is responsible for the performance by any other Financial Guarantor of any obligation under this deed.

1.5 Debt Financing Document

The parties agree that this deed is a Debt Financing Document for the purposes of the Debt Financing Documents.

1.6 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 1.6, 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 1.7 or by written notice after the date of this deed under and in accordance with clause 1.6(a).

1.7 Notice of Appointment

Until further written 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.

1.8 Appointees of State Delegate

- (a) Each State Delegate may:
 - (i) by written 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 1.1(a) by written notice to each other party to this deed.

- (b) All references to the State Delegate include a reference to an appointee under this clause 1.8.

1.9 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).

1.10 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 Finance 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 Finance Document or Equity Document.

2. Restructure Effective Time

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

3. Step Up fees

3.1 Step Up fees

- (a) With effect from the Restructure Effective Time:
- (i) FGIC hereby absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to all past or future FGIC Step Up Fees free from any Encumbrance in respect of the period up to the end of the Effective Period (including any such fees that are the subject of the Previous FGIC Waiver Letter); and
 - (ii) Syncora hereby absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to all past or future Syncora Step Up Fees free from any Encumbrance in respect of the period up to the end of the Effective Period (including any such fees that are the subject of the Previous Syncora Waiver Letter).
- (b) From the date of, and conditional upon the occurrence of Subscription Completion:
- (i) FGIC hereby absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to all FGIC Step Up Fees free from any Encumbrance that would otherwise be payable in respect of the period after Subscription Completion occurs; and
 - (ii) Syncora hereby absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to all Syncora Step Up Fees free from any Encumbrance that would otherwise be payable in respect of the period after Subscription Completion occurs.

3.2 Financial Guarantor Default

- (a) With effect from the Restructure Effective Time up to the end of the Effective Period but subject at all times to the provisions of clause 4, each Financial Guarantor absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to (and undertakes that it will not and will not permit or cause any person on its behalf or in its name to claim):
- (i) all Financial Guarantor Fees which are or may become due to it under the Financial Guarantor Fee Letters or under this deed at any time after a Financial Guarantor Default occurs and up to the end of the Effective Period in respect of any Financial Guarantee issued by it; and
 - (ii) any Financial Guarantor Fees that would become payable upon an early repayment of any Debt, pursuant to:
 - A. paragraph 1(f) of the Syncora Senior Guarantee Fee Letter;
 - B. the third bullet point of the FGIC Senior Guarantee Fee Letter;
 - C. paragraph 1(e) of the Syncora Junior Guarantee Fee Letter; and
 - D. the fourth bullet point of the FGIC Junior Guarantee Fee Letter.
- (b) If Subscription Completion occurs, in respect of the period after the date Subscription Completion occurs, each Financial Guarantor absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to (and undertakes that it will not and will not permit or cause any person on its behalf or in its name to claim):
- (i) all Financial Guarantor Fees which are or may become due to it under the Financial Guarantor Fee Letters or under this deed which accrue during or by reference to any period during which a Financial Guarantor Default subsists in respect of that Financial Guarantor; and
 - (ii) any Financial Guarantor Fees that would become payable upon an early repayment of any Debt, pursuant to:
 - A. paragraph 1(f) of the Syncora Senior Guarantee Fee Letter;
 - B. the third bullet point of the FGIC Senior Guarantee Fee Letter;
 - C. paragraph 1(e) of the Syncora Junior Guarantee Fee Letter; and
 - D. the fourth bullet point of the FGIC Junior Guarantee Fee Letter.

3.3 Acknowledgement

- (a) The Operating Company on behalf of the Operating Trust consents to each of the assignments in clause 3.1 and 3.2 and acknowledges that:

- (i) this deed constitutes express written notice of the assignments in clauses 3.1 and 3.2 above;
 - (ii) FGIC directs that any payment of amounts in respect of which clauses 3.1 and 3.2 operate be paid by the Operating Company on behalf of the Operating Trust directly to the Finance Company; and
 - (iii) Syncora directs that any payment of amounts in respect of which clauses 3.1 and 3.2 operate be paid by the Operating Company on behalf of the Operating Trust directly to Finance Company.
- (b) Each of the parties to this deed acknowledge that, following the assignments referred to in clauses 3.1 and 3.2 the moneys to be paid by the Operating Company on behalf of the Operating Trust to Finance Company are deemed to be paid out of the applicable Project Bank Account to Finance Company and by Finance Company back into the applicable Project Bank Account, but no actual payments will be made out of the applicable Project Bank Account.

4. Assigned Fees

4.1 Assignment

With effect from the Restructure Effective Time:

- (a) FGIC hereby absolutely, irrevocably and unconditionally assigns to the State all its right, title and interest in the FGIC Assigned Fees in respect of the Effective Period free from any Encumbrance; and
- (b) Syncora hereby absolutely, irrevocably and unconditionally assigns to the State all its right, title and interest in the Syncora Assigned Fees in respect of the Effective Period free from any Encumbrance.

4.2 Acknowledgement

Each of the Operating Company on behalf of the Operating Trust and the Finance Company consent to each of the assignments in clause 4.1 and acknowledges that:

- (a) this deed constitutes express written notice of the assignments in clause 4.1 above;
- (b) FGIC directs that any payment of FGIC Assigned Fees be paid by the Operating Company on behalf of the Operating Trust directly to the State; and
- (c) Syncora directs that any payment of Syncora Assigned Fees be paid by the Operating Company on behalf of the Operating Trust directly to the State.

4.3 Any receipt held on trust

Each Financial Guarantor agrees to hold on trust for the State any Assigned Fees received by it after the Restructure Effective Time and to pay the full amount of any such Assigned Fees so received to the State within five Business Days of the Financial Guarantor becoming aware of its receipt.

4.4 Claim reimbursement

If there is a Claim against any Financial Guarantor in respect of the period during the Effective Period and that Financial Guarantor pays out in respect of that Claim, within thirty Business Days of a written demand by that Financial Guarantor (such demand to be no later than ██████████

██████████ and accompanied by evidence of payment of that Claim), the State will pay to that Financial Guarantor an amount equal to the lesser of:

- (a) the amount of the Claim paid by that Financial Guarantor; and
- (b) the aggregate amount of all Assigned Fees in respect of that Financial Guarantor received by the State less:
 - (i) any amount reimbursed to the Operating Company on behalf of the Operating Trust and applied by it towards repayment of Senior Debt in accordance with clause 4.5; and
 - (ii) any Restructure Fees and Accrued Fees already paid to that Financial Guarantor up to that date.

4.5 Reimbursement to Reliance Rail

- (a) The State agrees that if, on that last day of the Effective Period:
 - (i) the State has received Assigned Fees pursuant to this deed; and
 - (ii) the State has not paid the Subscription Amount on the basis the Conditions to the Capital Commitment Deed were not satisfied or waived on or before ██████████ and is not under any further obligation to pay the Subscription Amount,

the State will pay to the Operating Company on behalf of the Operating Trust on the tenth Business Day following ██████████ an amount equal to ██████████ of the Assigned Fees which the State has received less any amounts that the State has paid, or is required to pay due to a claim made by a Financial Guarantor under clause 4.4 prior to ██████████, to the Financial Guarantors.

- (b) The Operating Company on behalf of the Operating Trust will ensure that any payments it receives pursuant to this clause 4.5 are applied to the repayment of Senior Debt, to the extent this is permitted under the Debt Financing Documents.

4.6 No release of Financial Guarantors

The parties agree and acknowledge that:

- (a) nothing in this deed, including clause 4.1, constitutes any release or waiver of any liability or obligation of the Financial Guarantors or either of them under any Financial Guarantees; and
- (b) the State does not assume (and shall not be deemed to have assumed) any liability or obligation whatsoever in respect of or arising out of any Financial Guarantee.

4.7 Acknowledgement regarding past Financial Guarantor Fees

Nothing in any Restructure Agreement shall be construed to give the State any right or entitlement to any Financial Guarantor Fees already paid to a Financial Guarantor as at the Restructure Effective Time or to require a Financial Guarantor to repay any such Financial Guarantor Fees to any party.

5. Post Subscription Funding Date

5.1 Reduced Financial Guarantor fees

- (a) Subject to clause 5.1(b) and (c), with effect from the Subscription Funding Date:
- (i) each Financial Guarantor absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to (and undertakes that it will not and will not permit or cause any person on its behalf or in its name to claim) any payment of Financial Guarantor Fees pursuant to each Financial Guarantor Fee Letter other than, subject to clause (a)(ii), Senior Debt Guarantee Fees; and
 - (ii) each Financial Guarantor absolutely, irrevocably and unconditionally assigns to Finance Company all its right, title and interest to (and undertakes that it will not and will not permit or cause any person on its behalf or in its name to claim) any payment of Senior Debt Guarantee Fees,

in each case, to the extent those fees are in excess of the amount (**Retained Guarantee Fee**) calculated as follows:

$$RGF = A \times B \times C$$

Where:

RGF = Retained Guarantee Fee

A = the weighted average amount of Senior Debt which is subject to a Financial Guarantee provided by that Financial Guarantor over the relevant Quarter

B = ██████%

C = the number of days in the Quarter / 365.

For these purposes of A and C, the first Quarter will be deemed to be the period from the Subscription Funding Date to the last date of the then current Quarter.

- (b) The Operating Company on behalf of the Operating Trust will pay the Retained Guarantee Fees to the Financial Guarantors in accordance with:
- (i) in the case of FGIC, the FGIC Senior Guarantee Fee Letter; and
 - (ii) in the case of Syncora, the Syncora Senior Guarantee Fee Letter,

provided that the first payment of Retained Guarantee Fees must be made on the Subscription Funding Date.

- (c) The assignment in relation to part of the Financial Guarantor Fees payable to each Financial Guarantor by the Operating Company on behalf of the Operating Trust pursuant to clause (a) is conditional upon the occurrence of Subscription Completion.

5.2 Financial Guarantor Fee Letters

The Financial Guarantor Fee Letters shall remain in full force and effect and shall continue to operate in accordance with their terms unless expressly waived, modified or amended by the terms of this deed.

5.3 Acknowledgement

- (a) The Operating Company on behalf of the Operating Trust consents to each of the assignments in clause 5.1 and acknowledges that:
- (i) this deed constitutes express written notice of the assignments in clause 5.1; and
 - (ii) each Financial Guarantor directs that any payment of amounts in respect of which clause 5.1 operate be paid by the Operating Company on behalf of the Operating Trust directly to Finance Company.
- (b) Each of the parties to this deed acknowledge that, following the assignments referred to in clause 5.1, the moneys to be paid by the Operating Company on behalf of the Operating Trust to Finance Company are deemed to be paid out of the applicable Project Bank Account to Finance Company and by Finance Company back into the applicable Project Bank Account, but no actual payments will be made out of the applicable Project Bank Account.

6. Fees from the State

6.1 Restructure Fee

The State will pay:

- (a) to FGIC, a fee in the amount of [REDACTED] plus GST; and
- (b) to Syncora, a fee in the amount of [REDACTED] plus GST,

on or before the third Business Day immediately following the Restructure Effective Time.

6.2 Accrued Fees

- (a) From the Restructure Effective Time to the last day of the Effective Period, the State will calculate an amount for each Financial Guarantor as follows:
- (i) in respect of FGIC, an amount of [REDACTED] per annum plus GST (or part thereof); and
 - (ii) in respect of Syncora, an amount of [REDACTED] per annum plus GST (or part thereof),
- in each case calculated on a daily basis.
- (b) Subject to paragraph (c) below and clause 6.3, on or before thirty Business Days following a Milestone Date, the State will pay:
- (i) to FGIC a fee calculated as the amount accrued under paragraph (a)(i) above less any Restructure Fee paid to FGIC and any amounts already paid under this clause 6.2 to FGIC; and

- (ii) to Syncora a fee calculated as the amount accrued under paragraph (a)(ii) above less any Restructure Fee paid to Syncora and any amounts already paid under this clause 6.2 to Syncora.
- (c) The obligation of the State to make payments to a Financial Guarantor under paragraph (b):
 - (i) is subject to State having received all the Assigned Fees that are payable to the State on or before the relevant date for payment under paragraph (b) in respect of that Financial Guarantor; and
 - (ii) will be reduced to the extent the State has made any reimbursement payments to the Financial Guarantors pursuant to clause 4.4 on or before the relevant date for payment under paragraph (b) in respect of that Financial Guarantor.
- (d) If a Financial Guarantor Default subsists in respect of a Financial Guarantor, then fees shall not be calculated in respect of that Financial Guarantor under clause 6.2(a) in respect of the period during which the Financial Guarantor Default subsists.
- (e) To the extent that any Accrued Fees pursuant to this clause have not become payable by [REDACTED] (due to a failure to satisfy the relevant Conditions in the Capital Commitment Deed or otherwise), the Accrued Fees will not be payable and will be forfeited by the Financial Guarantors.

6.3 Release of Financial Guarantees

If a Financial Guarantor is released from all of its obligations under all Financial Guarantees issued by it, for the purposes of clause 6.2, the State will only be required to pay, and the Financial Guarantor will only be entitled to receive, Accrued Fees calculated in respect of that Financial Guarantor up to the date of the release (less the Restructure Fee and any Accrued Fees already paid to that Financial Guarantor).

7. Waivers and releases

7.1 Events of Default

- (a) Each Financial Guarantor hereby waives, to the fullest extent possible and without imposing any condition, undertaking or other requirement, any rights (including any rights to take Enforcement Action) it has individually or jointly with any other Creditor (in its own right and as Controlling Party under the Senior Intercreditor Deed) in relation to any actual or alleged Event of Default, Potential Event of Default or Review Event other than a Material Event of Default during the period set out in paragraph (b) below.
- (b) The waiver in paragraph (a) above will be for the period from the Restructure Effective Time until the earlier of:
 - (i) receipt by Finance Company of all Scheduled Utilisations under the Senior Bank Loan Note Subscription Agreement; and
 - (ii) the last day of the Effective Period.

7.2 Current matters

By no later than the Restructure Effective Time, each of the Financial Guarantors:

- (a) must execute the Deed of Release; :
- (b) must withdraw any notice given to the Intercreditor Agent or any Reliance Rail Group Company prior to the Restructure Effective Time concerning any actual or alleged Event of Default or Potential Event of Default to the extent that it is permitted in its own right or as a Controlling Party under the Senior Intercreditor Deed to instruct the Intercreditor Agent to waive the actual or alleged Events of Default or Potential Events of Default to which that notice relates;
- (c) undertakes that, during, and in respect of, the period set out in clause 7.1(b) (to the extent that it is permitted to do so in its own right or as a Controlling Party under the Senior Intercreditor Deed):
 - (i) it will not instruct the Intercreditor Agent or Security Trustee to take Enforcement Action; and
 - (ii) if instructions are sought from it (whether pursuant to clause 5.3 of the Senior Intercreditor Deed or otherwise), it will instruct the Intercreditor Agent and Security Trustee not to take Enforcement Action,
 in respect of any actual or alleged Event of Default, Potential Event of Default, or Review Event other than a Material Event of Default;
- (d) must (to the extent that it is permitted to do so in its own right or as a Controlling Party under the Senior Intercreditor Deed) give an irrevocable direction to the Intercreditor Agent and the Security Trustee not to take Enforcement Action during, or in respect of, the period set out in clause 7.1(b), in respect of any actual or alleged Event of Default, Potential Event of Default, or Review Event other than a Material Event of Default.
- (e) must confirm to the Intercreditor Agent that, to its knowledge , there are no subsisting Events of Default (other than the Events of Default which have been disclosed to the Intercreditor Agent (in accordance with clause 5.2 of the Senior Intercreditor Deed and which are the subject of the waiver given in clause 7.1(a) and the undertakings given in paragraphs (c) and (d) above); and
- (f) must instruct, to the extent it has the power to do so as a Controlling Party under the Senior Intercreditor Deed, the Intercreditor Agent to waive and without imposing any condition, undertaking or other requirement, any rights (including any rights to take Enforcement Action it has individually or jointly with any other Creditor (in its own right and as a Controlling Party under the Senior Intercreditor Deed) in relation to any prior, subsisting potential, alleged or actual Events of Default by any Reliance Rail Group Company as at, or before, the Restructure Effective Time:
 - (i) of which the Financial Guarantor is aware or should reasonably be aware; or
 - (ii) which arise from fact, matters of circumstances of which the Financial Guarantor is aware or should reasonably be aware as at the Restructure Effective Time,

including without limitation by executing a notice in the form set out in Schedule 3 and delivering the executed notice to the addressees thereof.

7.3 DSCR calculations and Senior Debt Service

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. Assignment and Novation

8.1 Permitted assignment without consent

- (a) Subject to clause 8.2, at any time after the Restructure Effective Time, the State may assign or otherwise transfer (in whole or in part and in one transfer or many) any of its rights and obligations under this deed to a Permitted Transferee without the consent of each other party provided that:
- (i) the State also assigns or transfers its rights and obligations under the Capital Commitment Deed to the same person; and
 - (ii) in any event, the State complies with the other provisions of clause 11 of the Capital Commitment Deed in respect of such assignment or transfer.
- (b) Subject to clause 8.2, at any time after [REDACTED], the State or a Permitted Transferee may assign or otherwise transfer (in whole or in part and in one transfer or many) any of its rights and obligations 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] provided that:
- (i) the State also assigns or transfers its rights and obligations under the Capital Commitment Deed to the same person; and
 - (ii) in any event, the State complies with the other provisions of clause 11 of the Capital Commitment Deed in respect of such assignment or transfer.

8.2 Guarantee of Subscription Amount

If the State or a Permitted Transferee assigns or otherwise transfers any of its rights and obligations under this deed in accordance with clause 8.1(a) or clause 8.1(b), the State must on or prior to the assignment or transfer of its rights and obligations provide to the Holding Company and each Financial Guarantor a guarantee by the State of any obligations of the transferee under this deed, on terms to be agreed by (in each case acting reasonably) the State, the Holding Company and each of the Financial Guarantors.

8.3 No other assignment without consent

Except as permitted under clause 8.1(a) or clause 8.1(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.

9. Payments

9.1 Direction

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

9.2 Method of payment

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

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

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

9.3 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.

10. Representations, warranties and acknowledgements

10.1 By each party generally

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

10.2 Financial Guarantors additional representations and warranties

Each Financial Guarantor represents and warrants that:

- (a) it is the sole beneficial owner of the Financial Guarantor Fees;
- (b) it is entitled to assign, novate or transfer the Financial Guarantor Fees on the terms set out in the deed; and
- (c) it has not granted any Encumbrance over or in respect of the Financial Guarantor Fees.

10.3 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 10.

10.4 When representations made and warranties given

Each of the representations and warranties given under this clause 10 is given as at the date of this deed and as at the time immediately prior to the Restructure Effective Time.

11. Termination

11.1 Termination

If the Restructure Co-Ordination Deed is terminated pursuant to clause 3.1 thereof, then, subject to clause 3.3 of the Restructure Co-Ordination Deed this deed terminates automatically.

11.2 Effect of termination

Notwithstanding clause 11.1, if this deed is terminated then:

- (a) subject to clause 3.3 of the Restructure Co-Ordination Deed, the provisions of this deed will cease to have effect; and
- (b) each party retains the rights it has against the others in respect of any breach of this deed occurring before termination.

12. GST

12.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 12 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 12; 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.

12.2 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.

12.3 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.

12.4 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 12.3 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 12.3.

13. Notices

13.1 How notice to be given

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

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

State

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

Holding Company

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

Operating Company

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

Finance Company

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

FGIC

Attention: General Counsel

Address: co FGIC 125 Park Avenue New York, New York
10017 United State of America
Fax: +1 212 312 3221

Syncora

Attention: General Counsel
Address: 135 West 50th Street, 20th Floor, New York, New
York 10019 United States of America
Fax: +1 212 478 3587

- (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 13.1(b).

13.2 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.

14. General

14.1 Amendments

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

14.2 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.

14.3 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.

14.4 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.

14.5 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.

14.6 No merger

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

14.7 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.

14.8 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.

14.9 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 14.9.

Schedule 1 Financial Guarantees

Part A - Financial Guarantees issued by Syncora Guarantee, Inc

Guaranty No:	Relevant debt guaranteed	Date	Beneficiary
Senior Debt			
CA03403A	Senior Bonds	7/12/2006	Senior Bond Trustee for the benefit of the Senior Bondholders
CA03403B	Senior Bond Hedge Contract	7/12/2006	ABN AMRO Bank NV
CA03403C	Super Senior Hedge Contract	7/12/2006	Citibank NA
CA03403D	Senior Bank Debt	7/12/2006	Security Trustee
CA03403E	Senior Bank Debt Hedge Contract	7/12/2006	Sumitomo Mitsui Banking Corporation
CA03403F	Senior Bank Debt Hedge Contract	7/12/2006	Westpac Banking Corporation
CA03403G	Senior Bank Debt Hedge Contract	7/12/2006	Mizuho Corporate Bank
CA03403H	Senior Bank Debt Hedge Contract	7/12/2006	National Australia Bank
Junior Debt			
CA03416A	Junior Bonds	7/12/2006	Junior Bond Trustee for the benefit of the Junior Bondholders
CA03416B	Junior Bond Hedge Contract	7/12/2006	ABN AMRO Bank NV

Part B - Financial guarantees issued by FGIC UK Limited

Guaranty No:	Relevant debt guaranteed	Date	Beneficiary
Senior Debt			
UK 06080056	Senior Bonds	7/12/2006	Senior Bond Trustee for the benefit of the Senior Bondholders
UK 06080060	Senior Bond Hedge Contract	7/12/2006	ABN AMRO Bank NV
UK 06080061	Super Senior Hedge Contract	7/12/2006	Citibank NA
UK 06080058	Senior Bank Debt	7/12/2006	Security Trustee
UK 06080064	Senior Bank Debt Hedge Contract	7/12/2006	Sumitomo Mitsui Banking Corporation
UK 06080063	Senior Bank Debt Hedge Contract	7/12/2006	Westpac Banking Corporation
UK 06080065	Senior Bank Debt Hedge Contract	7/12/2006	Mizuho Corporate Bank
UK 06080062	Senior Bank Debt Hedge Contract	7/12/2006	National Australia Bank
Junior Debt			
UK 06080057	Junior Bonds	7/12/2006	Junior Bond Trustee for the benefit of the Junior Bondholders
UK 06080059	Junior Bond Hedge Contract	7/12/2006	ABN AMRO Bank NV

Schedule 2 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 has been appointed in respect of that party;
 - (ii) an application has been made to court or a resolution has been passed or an order has been made for the winding up or dissolution of that party;
 - (iii) that party has proposed or has taken any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them, other than:
 - A. in respect of a Financial Guarantor who has settled, compromised or made other arrangements in respect of any policies and/or claims in the ordinary course of its ordinary business); or
 - B. in the case of each Reliance Rail Group Company, negotiations with its Creditors (or any of them) in relation to a restructure of any of its Debt or for the provision of additional funding; or
 - (iv) that party has been declared or taken under any applicable law to be insolvent or that party's board of directors have resolved 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 Government Agency that is binding on it or any of its property;
 - (ii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iii) if the party is a corporation, contravene its constitution (if any).
- (g) **(Trust)** If the party is a trustee, that party represents and warrants to the other parties that:

- (i) **(Power)** it has power to enter into, deliver and perform this deed in its capacity as trustee of the Relevant Trust and to carry out the transactions contemplated by this deed;
- (ii) **(Trust validly created)** the Relevant Trust has been validly created and is in existence;
- (iii) **(Trustee validly appointed)** it has been validly appointed as trustee of the Relevant Trust and is the sole trustee of the Relevant Trust; and
- (iv) **(No action to remove)** no action has been taken or proposed to remove it as trustee of the Relevant Trust.

Schedule 3 Notice to the Intercreditor Agent and the Security Trustee

To: Permanent Custodians Limited
Attention: Mr Raji Karan - Relationship Management Group
Fax number: +61 2 9551 5099

To: BNY Trust (Australia) Registry Limited
Attention: Mr Raji Karan - Relationship Management Group
Fax number: +61 2 9551 5099

To: Reliance Rail Finance Pty Limited
Attention: Mr Ian Hunt
Fax number: +61 2 8339 9333
Email: IHunt@reliancerail.com.au

To: Reliance Rail Pty Limited (in its capacity as trustee for the Reliance Rail Trust and in its personal capacity)
Attention: Mr Ian Hunt
Fax number: +61 2 8339 9333
Email: IHunt@reliancerail.com.au

To: Reliance Rail Holdings Pty Limited (in its capacity as trustee for the Reliance Rail Holding Trust and in its personal capacity)
Attention: Mr Ian Hunt
Fax number: +61 2 8339 9333
Email: IHunt@reliancerail.com.au

[*] 2012

NSW Rolling Stock PPP - Instructions

We refer to:

- (a) the "NSW Rolling Stock PPP Common Terms Deed" dated 1 December 2006 between Permanent Custodians Limited as Intercreditor Agent, BNY Trust (Australia) Registry Limited as Security Trustee, Reliance Rail Finance Pty Limited (**Finance Company**), Reliance Rail Pty Limited in its capacity as trustee for the Reliance Rail Trust and in its personal capacity (**Operating Company**), Reliance Rail Holdings Pty Limited in its capacity as trustee for the Reliance Rail Holding Trust and in its personal capacity (**Holding Company**), Syncora Guaranty, Inc (**Syncora**) and FGIC UK Limited (**FGIC**) (**Common Terms Deed**); and
- (b) the "Financial Guarantors' Undertakings Deed" dated [***] between Finance Company, Operating Company, Holding Company, FGIC and Syncora.

Capitalised terms used in this letter have the meaning given to them in the Common Terms Deed and the Financial Guarantors' Undertakings Deed.

We hereby irrevocably:

- (a) withdraw any notice given to the Intercreditor Agent or any Reliance Rail Group Company prior to the Restructure Effective Time concerning any actual or alleged Event of Default or Potential Event of Default (to the extent that we are permitted in our own right or as Controlling Parties under the Senior Intercreditor Deed to instruct the Intercreditor Agent to waive the actual or alleged Events of Default or Potential Events of Default to which that notice relates);
- (b) (to the extent that we are permitted to do so in our own right or as Controlling Parties under the Senior Intercreditor Deed) give an irrevocable direction to the Intercreditor Agent and the Security Trustee not to take Enforcement Action during, or in respect of, the period set out in clause 7.1(b) of the Financial Guarantors' Undertakings Deed, in respect of any actual or alleged Event of Default, Potential Event of Default, or Review Event other than a Material Event of Default;
- (c) confirm to the Intercreditor Agent that, to our knowledge, there are no subsisting Events of Default (other than the Events of Default which have been disclosed to the Intercreditor Agent in accordance with clause 5.2 of the Senior Intercreditor Deed and which are the subject of the waiver given in clause 7.1(a) of the Financial Guarantors' Undertakings Deed, and the undertakings given in clauses 7.2(c) and (d) of the Financial Guarantors' Undertakings Deed); and
- (d) instruct, to the extent we have the power to do so as Controlling Parties under the Senior Intercreditor Deed, the Intercreditor Agent to waive, and without imposing any condition, undertaking or other requirement, any rights (including any rights to take Enforcement Action we have individually or jointly with any other Creditor (in our own right and as Controlling Parties under the Senior Intercreditor Deed) in relation to any prior, subsisting potential, alleged or actual Events of Default by any Reliance Rail Group Company as at, or before, the Restructure Effective Time:
 - (i) of which Financial Guarantors are aware or should reasonably be aware; or
 - (ii) which arise from fact, matters of circumstances of which the Financial Guarantors are aware or should reasonably be aware as at the Restructure Effective Time.

We acknowledge that nothing in this letter requires the Intercreditor Agent or Security Trustee to act in any way other than as authorised under the Debt Financing Documents.

This letter may be signed by Syncora and FGIC in counterparts.

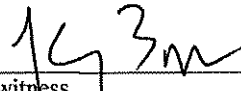
For and on behalf of

FGIC UK Limited

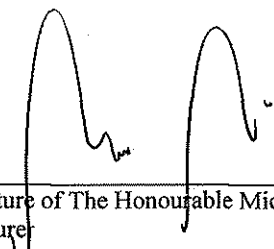
Syncora Guarantee Inc.

Executed as a deed.

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



Signature of witness




Signature of The Honourable Michael Baird MP,
Treasurer

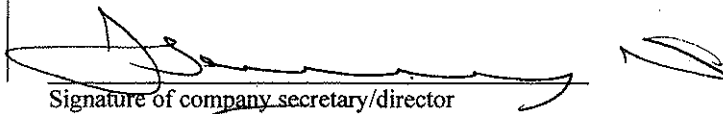
KLAY DAVID BROWN

Full name of witness

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



Signature of director



Signature of company secretary/director

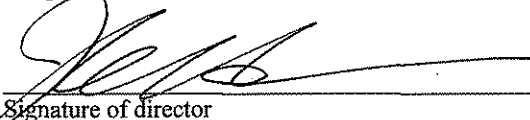
JOHN HARKNESS

Full name of director


JOHN DAVENTPORT

Full name of company secretary/director

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



Signature of director



Signature of company secretary/director

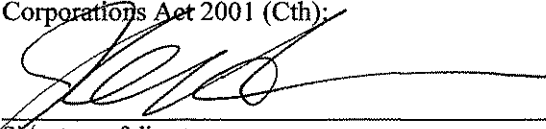
JOHN HARKNESS

Full name of director


JOHN DAVENTPORT

Full name of company secretary/director

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



Signature of director



Signature of company secretary/director

JOHN HARKNESS

Full name of director

JOHN DAVENTPORT

Full name of company secretary/director

The COMMON SEAL of FGIC UK Limited
was hereunto affixed in the presence of:

Signature of director

Full name of director

Signature of director

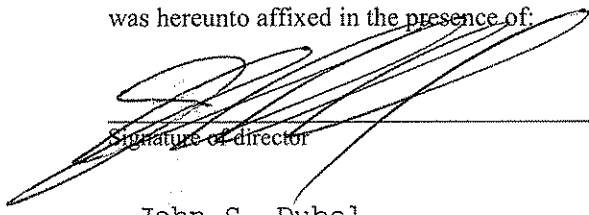
Full name of director

Signed, sealed and delivered for and on
behalf of **Syncora Guarantee Inc.** by its
authorised officer:

By:

Name: Claude Le Blanc
Title: Chief Financial Officer

The **COMMON SEAL** of **FGIC UK Limited**
was hereunto affixed in the presence of:



Signature of director

John S. Dubel

Full name of director



Signature of director

Timothy S. Travers

Full name of director

Signed, sealed and delivered for and on
behalf of **Syncora Guarantee Inc.** by its
authorised officer:

By:

Name: Claude Le Blanc
Title: Chief Financial Officer

The **COMMON SEAL** of **FGIC UK Limited**
was herunto affixed in the presence of:

Signature of director

Full name of director

Signature of director

Full name of director

Signed, sealed and delivered for and on
behalf of **Syncora Guarantee Inc.** by its
authorised officer:

By: _____

Name: Claude Le Blanc
Title: Chief Financial Officer

