

CROWN SOLICITOR'S OFFICE

DATED *3 December* 2006

THE HONOURABLE MICHAEL COSTA MP,

TREASURER

("the State")

and

RELIANCE RAIL PTY LIMITED

("PPP Co")

PERMANENT REGISTRY LIMITED

("the Security Trustee")

and

RAIL CORPORATION NEW SOUTH WALES

("the Authority")

DEED OF GUARANTEE

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DEED OF GUARANTEE made the 3rd day of December Two thousand and six.

Part 1 - PARTIES

BETWEEN

1.1 **THE HONOURABLE MICHAEL COSTA MP, TREASURER** for and on behalf of the State of New South Wales ("**the State**")

AND

1.2 **RELIANCE RAIL PTY LIMITED** (ACN 111 280 427) in its capacity as trustee of the Reliance Rail Trust, of Level 6, ABN AMRO Tower, 88 Phillip Street, Sydney, New South Wales ("**PPP Co**")

1.3 **PERMANENT REGISTRY LIMITED** (ACN 000 334 636) in its capacity as the security trustee of the NSW Rolling Stock PPP Security Trust on the terms of the Security Trust Deed ("**Security Trustee**")

(Parties 1.2 and 1.3 collectively called "**the Beneficiaries**")

1.4 **RAIL CORPORATION NEW SOUTH WALES** (ABN 59 325 778 353), constituted under the *Transport Administration Act 1988* (NSW) of Level 6, 18 Lee Street, Chippendale, New South Wales ("**Authority**")

RECITALS

- A. In pursuance of the *Public Authorities (Financial Arrangements) Act 1987* (NSW), as amended, upon the recommendation of the Minister to the Authority and with the approval of the Treasurer of the State of New South Wales, the Beneficiaries are to contract with the Authority for the purpose of financing, designing, constructing, commissioning and providing through life support for suburban railway cars, training simulators and a maintenance facility upon the terms set out in the documents detailed in Schedule One ("**the Project Documents**").
- B. The Beneficiaries and the Authority have requested the State to give this Guarantee of the obligations of the Authority under the Project Documents.
- C. The State has agreed to give this Guarantee of the Guaranteed Obligations.

Part 2 - DEFINITIONS AND INTERPRETATION

2.1. In this Guarantee unless the context otherwise requires the following words and expressions shall have meanings as follows:

2.1.1 "**the Act**" means the *Public Authorities (Financial Arrangements) Act 1987* (NSW);

2.1.2 "**the Authority**" means the Rail Corporation New South Wales, constituted under the *Transport Administration Act 1988* (NSW);

2.1.3 "**the Authority's Act**" means the *Transport Administration Act 1988* (NSW);

2.1.4 "**Beneficiaries**" means the parties referred to in clauses 1.2 and 1.3 and "**Beneficiary**" means either one of them;

2.1.5 "**Guarantee**" means this Deed of Guarantee;

2.1.6 "**Guaranteed Obligations**" means the obligations of the Authority to the Beneficiaries (or any of them) under the Project Documents;

2.1.7 "**the Minister**" means the Minister of State from time to time administering the Authority's Act;

2.1.8 "**Permitted Dealings**" means:

(a) any transfer, assignment, novation or other dealing with the rights, title, interest or obligations of a Beneficiary under the Project Documents and this Guarantee which is permitted under the terms of the Project Documents;

(b) the granting by a Beneficiary of any mortgage, charge or encumbrance over their rights, title or interest under the Project Documents and this Guarantee;

(c) any transfer, assignment, novation or other dealing with the rights, title, interest or obligations of a Beneficiary under the Project Documents and this Guarantee pursuant to the terms of the Project Documents upon enforcement of any mortgage, charge or encumbrance referred to in paragraph (b);

2.1.9 "**the Project Contract**" has the meaning given to that term in paragraph 1 of Schedule One;

- 2.1.10 **"the Project Documents"** means the documents listed in Schedule One;
- 2.1.11 **"Reliance Rail Trust"** means the trust constituted by the trust deed dated 5 October 2005 executed by PPP Co;
- 2.1.12 **"the Security Trust Deed"** means the security trust deed dated on or about the date of this Guarantee between the Security Trustee, PPP Co and others;
- 2.1.13 **"the Term"** means the period from the date the first Project Document comes into force and effect until the earlier of the date seven months after the date upon which the Authority has fully discharged all Guaranteed Obligations (including any payment of termination payments and interest thereon) under the last of the Project Documents to remain in force; and
- 2.1.14 **"the Treasurer"** means the Treasurer of the State.
- 2.2 Except where the context otherwise requires, a reference in this Guarantee to:
- 2.2.1 the singular number includes a reference to the plural number and vice versa;
- 2.2.2 any gender includes a reference to the other genders and each of them;
- 2.2.3 any person or company shall mean and include the legal personal representatives, successors in title and permitted assigns of such person or company as the circumstances may require;
- 2.2.4 a company includes a corporation and person and vice versa;
- 2.2.5 the Authority shall, in the event that any of it ceases to exist or is reconstituted., renamed or replaced or that its powers or functions or any of them are transferred to any other entity, refer respectively to any such entity, body or group established or constituted in lieu thereof or succeeding to similar powers or functions;
- 2.2.6 statutes, regulations, ordinances or by-laws shall be deemed for all purposes to include a reference to any statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same from time to time;
- 2.2.7 month shall be construed as a reference to a calendar month;
- 2.2.8 a receiver includes a receiver and manager and a liquidator includes a provisional liquidator and official manager;

- 2.2.9 this Guarantee or a Project Document is a reference to this Guarantee or a Project Document, as applicable as amended, assigned, novated, supplemented, varied or replaced in accordance with their terms.
- 2.3 A "business day" means a day which is not a Saturday, Sunday or public holiday in the State of New South Wales.
- 2.4 Where any time limit pursuant to this Guarantee falls on a day which is not a business day then that time limit shall be deemed to expire on the next business day.
- 2.5 Where any covenant, condition, agreement, warranty or other provision of this Guarantee expressly or impliedly binds more than one person then it shall bind each such person severally and all such persons jointly.
- 2.6 Where a word or phrase is given a defined meaning in this Guarantee, any other part of speech or other grammatical form in respect of such word or phrase shall, unless the context otherwise requires, have a corresponding meaning.
- 2.7 This Guarantee (including schedule one) constitutes the entire agreement between the parties and supersedes all prior agreements and understandings.
- 2.8 The illegality of any provision of this Guarantee shall not affect the validity or enforceability of any other provision.
- 2.9 The headings and index used in this Guarantee are for convenience only and shall not affect the interpretation of this Guarantee.

Part 3 - GUARANTEE

- 3.1 Subject to and in accordance with the provisions of this Guarantee, the State hereby unconditionally and irrevocably guarantees to each of the Beneficiaries the due performance by the Authority of the Guaranteed Obligations provided that there shall be no liability upon the State under this Guarantee unless and until:
- 3.1.1 there has been a failure on the part of the Authority to fully and completely perform a Guaranteed Obligation when due;
- 3.1.2 any period of time allowed to the Authority under the Project Documents to remedy its failure to perform the Guaranteed Obligations has expired; and
- 3.1.3 the relevant Beneficiary has served written notice upon the State advising of such failure by the Authority and requiring the State to satisfy its obligations under this Guarantee within twenty-one (21) business days of receipt of such notice.

- 3.2 Subject to clause 3.1, this Guarantee shall be a continuing guarantee notwithstanding any settlement of account, intervening payment or other matter or thing whatsoever to the contrary and the State's liability as guarantor shall not be affected by anything which might otherwise have that effect at law or equity.
- 3.3 Subject to clause 3.1, the State shall be and continue to be liable under this Guarantee in respect of the Guaranteed Obligations notwithstanding any discharge of the Authority from any or all of the Guaranteed Obligations for whatever reason including, without limitation, the determination or novation of the Project Documents as a Permitted Dealing or the abolition of or other circumstance resulting in the cessation of the Authority.
- 3.4 Any liability of the State under this Guarantee shall be discharged out of the Consolidated Fund of the State.
- 3.5 This Guarantee is irrevocable and shall remain in force until expiration of the Term.
- 3.6 PPP Co shall not, except pursuant to Permitted Dealing, without the prior consent in writing of the Treasurer of the State, assign or encumber the benefit of this Guarantee.
- 3.7 Nothing in this Guarantee shall be construed as a waiver by the State of any of the provisions of the Act, as amended and this Guarantee is to be read subject to the provisions of the Act.
- 3.8 The Authority will at all times indemnify and keep indemnified Her Majesty, the State, the Treasurer and the Government of the State of New South Wales against any and all liabilities all or any of them may incur under or by reason of this Guarantee.

Independent Obligation

- 3.9 This Guarantee is independent of and unaffected by any other right or remedy which the Beneficiaries may hold at any time in respect of the Guaranteed Obligations.

3.10 Warranty

The State represents and warrants that:

- 3.10.1 the recommendation of the Minister of the Authority (as referred to in recital A) and the approval of the Treasurer (as referred to in recital A) authorising the Authority to enter into a "joint financing arrangement" (as defined in the Act) on the terms set out in the Project Documents have been issued and are in full force and effect;
- 3.10.2 it is authorised to issue this Guarantee under the Act; and
- 3.10.3 its obligations under this Guarantee are valid, binding and enforceable.

Part 4 - NOTICES

4.1 Address for service

Any notice or demand to be given or made to or by the State, or the Beneficiaries must be in writing delivered to the address or sent to the facsimile number of the recipient as notified to the other party in accordance with this clause.

(a) To the State:

NSW Treasury

Governor Macquarie Tower

1 Farrer Place

SYDNEY NSW 2000

Facsimile: (02) 9221 7029

Attention: The Secretary

(b) If to PPP Co:

To: Reliance Rail Pty Limited

Level 6, ABN AMRO Tower

88 Phillip Street, Sydney, New South Wales

Attention: PPP Co's Representative

Facsimile: (02) 9087 4000

(c) If to Security Trustee:

To: Permanent Registry Limited

Level 4

35 Clarence Street, Sydney, New South Wales

Attention: Senior Manager

Facsimile: (02) 8295 8675

(d) If to the Authority:

Name of Authority: Rail Corporation New South Wales

Address: Level 6, 18 Lee Street

Chippendale, New South Wales

Attention: RailCorp's Representative (Rolling Stock PPP)

Facsimile: (02) 9379 4378

4.2 Any notice given under this provision shall be deemed given:

- (a) if delivered, upon receipt;
- (b) if mailed, upon the date two business days after posting; and
- (c) if by facsimile, upon receipt by the sender of a confirmation from the intended recipient that the facsimile transmission was legibly received.

Part 5 - SOVEREIGN IMMUNITY & GENERAL

5.1 Subject only to the provisions of the *Crown Proceedings Act 1988* (NSW), the State waives to the fullest extent permitted by the laws of the State of New South Wales any right to immunity from set-off, legal proceedings, attachment prior to judgment or other attachment or execution of judgment or process on the grounds of sovereignty of itself and its property in respect of its obligations under this Guarantee.

Exercise of Rights

5.2 Each party may exercise its rights, powers and remedies at its discretion and separately or concurrently with any other right, power or remedy. A single or partial exercise of a right, power or remedy by any party does not prevent further exercise of that right or of any other right, power or remedy and failure by any party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Waiver

5.3 A provision or a right created under this Guarantee may not be waived except by instrument in writing signed by the party granting the waiver.

Proper Law

5.4 This Guarantee is to be governed and interpreted by reference to the laws of the State of New South Wales and the State and any of the Beneficiaries which makes a claim on the State pursuant to this Guarantee irrevocably submits to the exclusive jurisdiction of the Courts of the State of New South Wales and Courts having jurisdiction in appeals therefrom.

Variations of Arrangements

5.5 No variation to or amendment of any term of this Guarantee may be made except by instrument in writing signed by the State and each Beneficiary.

Permitted Assigns

- 5.6 The State acknowledges that PPP Co has encumbered or assigned or will encumber or will assign by way of mortgage or charge, its right, title and interest in and to the Project Documents and/or the Guarantee and that such dealing is a Permitted Dealing.

Enforcement Costs

- 5.7 The State agrees to reimburse the Beneficiaries for any reasonable costs or expenses reasonably incurred by them in connection with the enforcement of their rights under this Guarantee.

IN WITNESS whereof this Guarantee has been duly executed as a deed the day and year first above-written.

SCHEDULE ONE

Project Documents

1. Rolling Stock PPP Project Contract between the Authority and PPP Co dated on or about the date of this Guarantee ("**Project Contract**")
2. Call Option Deed (as defined in the Project Contract).
3. Maintenance Facility Lease (as defined in the Project Contract).
4. Maintenance Facility Licence (as defined in the Project Contract).
5. Rolling Stock Manufacture Contract Side Deed (as defined in the Project Contract).
6. TLS Contract Side Deed (as defined in the Project Contract).
7. Maintenance Facility Construction Contract Side Deed (as defined in the Project Contract).
8. Debt Finance Side Deed (as defined in the Project Contract).
9. RailCorp Deed of Charge (as defined in the Project Contract).
10. Cross Guarantee and Indemnity (as defined in the Project Contract).
11. Expert Determination Agreements (as defined in the Project Contract).
12. Source Code Escrow Agreement (as defined in the Project Contract).
13. Approved Escrow Deeds (as defined in the Project Contract).
14. Maintenance Site Safety Interface Agreement (as defined in the Project Contract).
15. Right of Entry Deed for Cardiff Maintenance Depot (as defined in the Project Contract)
16. Such other documents as are approved in writing from time to time by the Treasurer.

SIGNED SEALED AND DELIVERED by **THE HONOURABLE MICHAEL COSTA MP**
Treasurer for and on behalf of the State of New South Wales as aforesaid in the presence of:

Seena White

Michael Costa

SIGNED SEALED AND DELIVERED for and on behalf of **RELIANCE RAIL PTY LIMITED AS TRUSTEE OF THE RELIANCE RAIL TRUST**

Greg Pauline
by its attorney under a Power of Attorney dated *24 November 2006*
in the presence of:

Matthew Stott

Signature of Witness

Matthew Stott

Name of Witness

G. Pauline

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney.

SIGNED SEALED AND DELIVERED for and on behalf of **PERMANENT REGISTRY LIMITED AS THE SECURITY TRUSTEE OF THE NSW ROLLING STOCK PPP SECURITY TRUST**

Paul Anthony Armstrong
by its attorney under a Power of Attorney dated *28 November 2006*
in the presence of:

Anthony Walsh

Signature of Witness

ANTHONY WALSH

Name of Witness

Paul Anthony Armstrong

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney.

I, **VINCE GRAHAM** the Chief Executive Officer of **RAIL CORPORATION NEW SOUTH WALES** affixed the official Seal of Rail Corporation New South Wales.

in the presence of:
Irene Rusaik
(IRENE RUSAIK
COMPANY SECRETARY)

