

# 2012 Restructure Consent Deed

Rail Corporation New South Wales ABN 59 325 778 353

Reliance Rail Pty Limited ACN 111 280 427  
(as trustee of the Reliance Rail Trust)

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2012 Restructure Consent Deed made at Sydney on

3 FEBRUARY  
(January) 2012

**Parties**                    **Rail Corporation New South Wales ABN 59 325 778 353** Level 20, 477 Pitt Street, Sydney, New South Wales (**RailCorp**)

**Reliance Rail Pty Limited ACN 111 280 427** as trustee of the Reliance Rail Trust, of Level 9, 333 George Street, Sydney, New South Wales (**PPP Co**)

## Background

- A.        On 3 December 2006, RailCorp and PPP Co entered into the Project Contract in respect of the Project.
- B.        It is proposed that the State will make an equity contribution in relation to the Project and that certain other transactions will occur on the terms set out in the Capital Commitment Deed and the other Restructure Agreements.
- C.        The parties now agree to provide certain consents under the Project Contract and other Project Agreements on the terms of this deed to effect the transactions contemplated by the Restructure Agreements.

## Operative provisions

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### 1.        **Definitions and interpretation**

#### 1.1       **Definitions from Project Contract**

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

#### 1.2       **Further definitions**

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

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

**Financial Guarantors' Undertaking Deed** has the meaning given in the Restructure Co-Ordination Deed.

**First Refinanced Debt** has the meaning given in the Capital Commitment Deed.

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

**Project Contract** means the Project Contract No. C01645 between RailCorp and PPP Co for the RailCorp Rolling Stock PPP dated 3 December 2006.

**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 Obligors, the State, the Stapled Security Holders, the Note Holders (each as defined therein) and others.

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

### 1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;  
and unless the context indicates a contrary intention:
- (b) an obligation or 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 substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as updated, 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) a reference in a schedule, exhibit, attachment or annexure to a clause, paragraph, section, schedule, exhibit, attachment or annexure is a reference to a clause, paragraph, section, schedule, exhibit, attachment or annexure to or of that schedule, exhibit, attachment or annexure;
- (j) 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;
- (k) **includes** or **such as** in any form are not words of limitation; and
- (l) a reference to **\$** or **dollar** is to Australian currency.

### 1.4 No bias against drafting party

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

### 1.5 Inconsistencies

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

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## **2. Consent to Restructure Agreements**

### **2.1 RailCorp consent**

- (a) RailCorp gives all consents that may be required from it under each of the RailCorp Project Agreements, including under:
  - (i) clauses 42.2, 42.5 and 43.1 of the Project Contract for the benefit of PPP Co;
  - (ii) clause 10.1 of the Debt Finance Side Deed for the benefit of the Security Trustee; and
  - (iii) clause 5 of the Rolling Stock Manufacture Contract Side Deed for the benefit of the Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors and the Independent Certifier (as defined in the Rolling Stock Manufacture Contract Side Deed),

in connection with the entry into the Restructure Agreements by the parties thereto, the incurring of the obligations by the parties thereto under the Restructure Agreements and the carrying out of the transactions contemplated by the Restructure Agreements.

- (b) The consents given by RailCorp under clause 2.1(a) take effect as a deed poll and are given for the benefit of those parties identified in clause 2.1(a).

### **2.2 Acknowledgement**

- (a) The consents under clause 2.1(a) do not affect the requirements of clause 44 of the Project Contract, so PPP Co will still need to comply with the requirements of clause 44 of the Project Contract, and obtain any consent from RailCorp which may be required under clause 44 of the Project Contract, in connection with all future Refinancings, including the Refinancing of the First Refinanced Debt.
- (b) Notwithstanding clause 2.2(a), the parties acknowledge that if the State provides to RailCorp a notice stating that the conditions in clause 3.1 of the Capital Commitment Deed have been, or will on any Refinancing be, satisfied (or waived) and Subscription Completion under the Capital Commitment Deed will take place, then:
  - (i) the Refinancing pursuant to that transaction shall be deemed to be an Assumed Refinancing for the purposes of clause 44.6 of the Project Contract; and
  - (ii) notwithstanding the last paragraph of clause 44.6 of the Project Contract, RailCorp is entitled to its share of or, failing agreement, 50% of any Refinancing Gain (as calculated in accordance with the Refinancing Assumptions and the Base Case Financial Model as at the date of Financial Close) generated by that Refinancing.

### **2.3 Financial Model**

The parties acknowledge that the financial models provided under clause 2(b)(i) of the Restructure Co-Ordination Deed and clause 3.1(a) of the Capital Commitment Deed do not constitute the Base Case Financial Model, or the Financial Model, under the Project Contract. This clause does not affect PPP Co's obligations under the Project Contract with respect to the Base Case Financial Model and the Financial Model.

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### **3. Amendments to Project Contract**

#### **3.1 Definition of Project Agreements**

Clause 1.1 of the Project Contract is amended as shown in Schedule 2 of this deed.

#### **3.2 Definition of Equity Document**

The Project Contract defines Equity Documents to mean the documents described in Schedule 17 of the Project Contract. Schedule 17 of the Project Contract is amended as shown in Schedule 3 of this deed.

#### **3.3 Definition of Debt Financing Documents**

The Project Contract defines Debt Financing Documents as having the meaning given in the Common Terms Deed. The parties to this deed acknowledge that the parties to the Common Terms Deed have agreed that the documents listed below are Debt Financing Documents under the Common Terms Deed:

- (a) Reliance Rail Undertakings Deed;
- (b) Financial Guarantors' Undertaking Deed;
- (c) Deed of Release.

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

#### **4.1 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 Schedule 1 is correct.

#### **4.2 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 4.

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

Each of the representations and warranties given under this clause 4 is given as at the date of this deed.

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### **5. Acknowledgment and affirmation of Project Contract**

- (a) RailCorp and PPP Co acknowledge and agree that the consents in clause 2 do not affect their continuing obligations under the Project Contract.
- (b) Except to the extent otherwise stated in this deed, the parties:
  - (i) expressly ratify and confirm the terms and conditions of the Project Contract; and
  - (ii) acknowledge, affirm and agree to perform their obligations under the Project Contract as amended from time to time.

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## **6. General**

### **6.1 Amendments**

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

### **6.2 Costs**

Except as otherwise provided in this 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.

This clause does not affect RailCorp's rights under clause 44.8 of the Project Contract in connection with all future Refinancings, including the Refinancing of the First Refinanced Debt.

### **6.3 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.

### **6.4 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.

### **6.5 No merger**

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

### **6.6 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.

### **6.7 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.

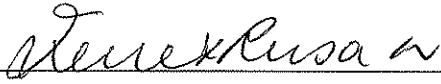
## **6.8 Governing law and jurisdiction**

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 6.8.



**Executed** as a deed and, by RailCorp for the purposes of clause 2.1, as a deed poll.

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

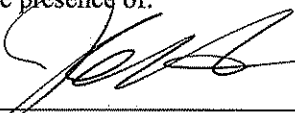
  
\_\_\_\_\_

Signature of Witness

IRENE RUSAK  
\_\_\_\_\_

Name of Witness in full


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


  
\_\_\_\_\_

Signature of Secretary/other Director

JOHN HARKNESS  
\_\_\_\_\_

Name of Secretary/other Director in full

  
\_\_\_\_\_  
Signature  
ROB MASOLI, CHIEF EXECUTIVE

  
\_\_\_\_\_

Signature of Director and Secretary

JOHN DAVENPORT  
\_\_\_\_\_

Name of Director and Secretary in full

## Schedule 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) **(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 other than, in the case of PPP Co, 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 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).
- (g) **(Trust)** PPP Co 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 Trust and to carry out the transactions contemplated by this deed;
  - (ii) **(Trust validly created)** the Trust has been validly created and is in existence;
  - (iii) **(Trustee validly appointed)** it has been validly appointed as trustee of the Trust and is the sole trustee of the Trust; and
  - (iv) **(No action to remove)** no action has been taken or proposed to remove it as trustee of the Trust.

## Schedule 2 - Amendments to clause 1.1 of Project Contract

1. The definition of Project Agreements is amended as shown below:

**"Project Agreements"** means:

- (a) this Contract;
- (b) the Cross Guarantee and Indemnity;
- (c) the Call Option Deed;
- (d) the Maintenance Facility Lease;
- (e) the Maintenance Facility Licence;
- (f) any Maintenance Site Safety Interface Agreement;
- (g) the Rolling Stock Manufacture Contract;
- (h) the Rolling Stock Manufacture Contract Side Deed;
- (i) the Rolling Stock Manufacture Guarantee;
- (j) the Rolling Stock Subcontract;
- (k) the TLS Contract;
- (l) the TLS Contract Side Deed;
- (m) the TLS Guarantee;
- (n) the Maintenance Facility Construction Contract;
- (o) the Maintenance Facility Construction Contract Side Deed;
- (p) the Maintenance Facility Construction Guarantee;
- (q) the Maintenance Facility Subcontract;
- (r) the Debt Financing Documents;
- (s) the Debt Finance Side Deed;
- (t) the RailCorp Deed of Charge;
- (u) the Equity Documents;
- (v) the PAFA Act Guarantee;
- (w) the Expert Determination Agreements;
- (x) the Source Code Escrow Agreement;
- (y) the Approved Escrow Deeds (Core Contractors); and
- (z) the Right of Entry Deed for Cardiff Maintenance Depot;
- (aa) the Deed of Release - Independent Verifier Claim;

- (bb) the Deed of Release - CCTV Claim;
- (cc) the Deed of Release - Energy Australia Kiosk;
- (dd) the Deed of Release - Earthing & Bonding;
- (ee) the Deed of Release - Roads 5 and 7;
- (ff) the Deed of Release - Financial Close;
- (gg) the Fleet Management Facility System (FMFS) Side Deed;
- (hh) the RailCorp Consent Deed;
- (ii) the Restructure Coordination Agreement;
- (jj) the Capital Commitment Deed;
- (kk) the RSM Contractor Undertakings Deed;
- (ll) the Deed of Settlement;
- (mm) the RailCorp Set 7 Waiver Letter;
- (nn) the RSM Set 7 Waiver Letter;
- (oo) the RailCorp Set 1 Waiver Letter;
- (pp) the RSM Set 1 Waiver Letter; and
- (qq) the TLS Consent Letter.

2. The following new definitions are inserted in clause 1.1 (in alphabetical order):

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

**"Deed of Release - CCTV Claim"** means the deed so titled between RailCorp and PPP Co dated on or about 17 May 2010.

**"Deed of Release - Earthing & Bonding"** means the deed so titled between RailCorp and PPP Co dated 19 January 2012.

**"Deed of Release - Energy Australia Kiosk"** means the deed so titled between RailCorp and PPP Co dated on or about 19 January 2012.

**"Deed of Release - Financial Close"** means the deed so titled between RailCorp and PPP Co dated on or about 19 January 2012.

**"Deed of Release - Independent Verifier Claim"** means the deed so titled between RailCorp and PPP Co dated on or about 17 May 2010.

**"Deed of Release - Roads 5 and 7"** means the deed so titled between RailCorp and PPP Co dated on or about 19 January 2012.

**"Deed of Settlement"** has the meaning given in the Restructure Co-Ordination Deed.

**"Fleet Management Facility System (FMFS) Side Deed"** means the deed so titled between RailCorp, PPP Co, EDI Rail and the Original TLS Contractor dated on or about 19 January 2012.

**"RailCorp Consent Deed"** has the meaning given in the Restructure Co-Ordination Deed.

**"RailCorp Set 1 Waiver Letter"** means the letter from RailCorp to PPP Co dated on or about 9 June 2011 (Ref: RC07549) and countersigned by PPP Co on or about 30 June 2011.

**"RailCorp Set 7 Waiver Letter"** has the meaning given in the Restructure Co-Ordination Deed.

**"Restructure Coordination Agreement"** means the deed entitled "Restructure Co-Ordination Deed" dated on or about 25 January 2012 between the State, PPP Co Holding Co (in its own right and as trustee of the Holding Trust), PPP Co (in its own right and as trustee of the Operating Trust), PPP Co Finance Co, RailCorp, the Original Rolling Stock Manufacturer, the Security Trustee and others.

**"RSM Contractor Undertakings Deed"** has the meaning given in the Restructure Co-Ordination Deed.

**"RSM Set 1 Waiver Letter"** means the letter from PPP Co to the Original Rolling Stock Manufacturer dated on or about 30 June 2011 (Ref: RR#12465) and countersigned by the Original Rolling Stock Manufacturer.

**"RSM Set 7 Waiver Letter"** has the meaning given in the Restructure Co-Ordination Deed.

**"TLS Consent Letter"** has the meaning given in the Restructure Co-Ordination Deed.

### Schedule 3 - Amendments to Schedule 17 of Project Contract

Schedule 17 of the Project Contract is amended as shown below:

#### Schedule 17 Equity Documents

(Clause 1.1)

1. Unitholders Agreement dated on or about the date of this Contract between PPP Co Holding Co (in its own right and as trustee of the Holding Trust), PPP Co (in its own right and as trustee of the Operating Trust), PPP Co Finance Co and the Equity Investors and any other instrument so nominated by the holders of the Securities upon completion of a Power of Sale;
2. Equity Subscription Agreement (Holding) in respect of the Holding Trust dated on or about the date of this Contract between PPP Co Holding Co (in its own right and as trustee of the Holding Trust), PPP Co (in its own right and as trustee of the Operating Trust), PPP Co Finance Co, the Equity Investors, Babcock & Brown Australia Pty Limited and ABN AMRO Australia Pty Limited;
3. Equity Subscription Agreement (Operating) in respect of the Operating Trust dated on or about the date of this Contract between PPP Co Holding Co and PPP Co (in its own right and as trustee of the Operating Trust);
4. Deed Poll (Holding) dated on or about the date of this Contract executed by PPP Co Holding Co ("**Deed Poll (Holding)**");
5. Deed Poll (Operating) dated on or about the date of this Contract executed by PPP Co;
6. Trust Deed (Holding) means the trust deed dated on or about the date of this Contract executed by PPP Co Holding Co, constituting the Holding Trust;
7. Trust Deed (Operating) means the trust deed dated on or about the date of this Contract executed by PPP Co to replace the Trust Deed (Operating) dated 5 October 2005 executed by PPP Co, constituting the Operating Trust;
8. Constitution (Holding) dated on or about the date of this Contract adopted by the Holding Trustee;
9. Constitution (Operating) dated on or about the date of this Contract adopted by Trustee;
10. Constitution (Finance) dated on or about the date of this Contract adopted by PPP Co Finance Co;
11. Noteholder Deed Poll (in the form set out in Schedule 4 of the Deed Poll (Holding)) between PPP Co Holding Co and ABN AMRO Investments Australia Limited (as trustee of the ABN AMRO Rail Investments Trust);
12. Noteholder Deed Poll (in the form set out in Schedule 4 of the Deed Poll (Holding)) between PPP Co Holding Co and AMP Investment Services Pty Limited (as trustee of the Infrastructure Equity Fund);
13. Noteholder Deed Poll (in the form set out in Schedule 4 of the Deed Poll (Holding)) between PPP Co Holding Co and AMP Investment Services Pty Limited (as trustee of the AMP Capital Global Infrastructure Fund No. 2);

14. Noteholder Deed Poll (in the form set out in Schedule 4 of the Deed Poll (Holding)) between PPP Co Holding Co and AMP Capital Investors Limited (as trustee of the REST Infrastructure Trust);
15. Noteholder Deed Poll (in the form set out in Schedule 4 of the Deed Poll (Holding)) between PPP Co Holding Co and Babcock & Brown Public Partnerships GP Limited;
16. Noteholder Deed Poll (in the form set out in Schedule 4 of the Deed Poll (Holding)) between PPP Co Holding Co and Downer EDI Limited;
17. Noteholder Deed Poll (in the form set out in Schedule 4 of the Deed Poll (Operating)) between PPP Co Holding Co and PPP Co;
18. Deed of Novation in substantially the form of Annexure B of the Equity Subscription Agreement (Holding);
19. Deed of Accession in substantially the form of schedule 6 of the Unitholders Agreement; and
20. Deed of Amendment (Unitholders Agreement) dated on or about 25 January 2012 between PPP Co Holding Co (in its own right and as trustee of the Holding Trust), PPP Co (in its own right and as trustee of the Operating Trust), PPP Co Finance Co and the Equity Investors;
21. Amending Deed (Holding) dated on or about 25 January 2012 executed by PPP Co Holding Co, amending the Deed Poll (Holding);
22. Amending Deed (Operating) dated on or about 25 January 2012 executed by PPP Co, amending the Deed Poll (Operating);
23. Existing Investors Side Deed dated on or about 25 January 2012 between the State and the Equity Investors; and
- 20-24. any other document which the Equity Investors and RailCorp agree is an Equity Document.

Defined terms in this schedule 17 have the meaning given in clause 1.1 of the Conditions of Contract and in schedule 20 (Permitted Share Capital Dealings).