



**RailCorp**

## RailCorp Deed of Charge

Rail Corporation New South Wales  
ABN 59 325 778 353  
Chargee

Reliance Rail Pty Limited  
as trustee for Reliance Rail Trust  
ABN 18 111 280 427  
Trustee

Reliance Rail Finance Pty Limited  
ACN 120 380 805  
Surety

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Our reference 130/604/80011438

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RailCorp Deed of Charge made at Sydney on 3 December 2006

**Parties**                    **Rail Corporation New South Wales ABN 59 325 778 353** of Level 6, 18 Lee Street, Chippendale, New South Wales ("Chargee")

**Reliance Rail Pty Limited ABN 18 111 280 427** of Level 6, 88 Philip Street, Sydney, New South Wales as trustee of the Reliance Rail Trust ("Trustee")

**Reliance Rail Finance Pty Limited ACN 120 380 805** of Level 6, 88 Philip Street, Sydney, New South Wales ("Surety")

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**1. Definitions and interpretation**

**1.1 Project Contract definitions**

Definitions in the Project Contract apply in this Charge unless the relevant term is defined in this Charge, and will continue to do so notwithstanding the termination of the Project Contract.

**1.2 Definitions**

In this Charge:

"**Business**" means each business and commercial undertaking conducted by the Chargors either alone or with others during the currency of this Charge, including without limitation, the business of undertaking the Project.

"**Capital**" means, in respect of each Chargor, the uncalled and called but unpaid capital of that Chargor.

"**Charged Property**" means, in respect of each Chargor, all of that Chargor's assets, undertaking and rights, both present and future, including all of the following:

- (a) the Capital of that Chargor; and
- (b) in the case of the Trustee, the whole of the assets of the Trust respectively and its right of indemnity and exoneration from the assets of the Trust.

"**Chargor**" means each of the Trustee and the Surety severally and "**Chargors**" means each of them individually and collectively.

"**Encumbrance**" means a person in favour of whom a Security Interest is granted.

"**Event of Crystallisation**" means, subject to the Debt Finance Side Deed in respect of each Chargor, each or any of the following events:

- (a) any breach of clause 5.1;
- (b) any Security Interest over any asset of a Chargor becomes enforceable or any Security Interest that is a floating security over any asset of a Chargor crystallises or otherwise becomes a fixed or specific security;
- (c) any Event of Insolvency occurs in relation to a Chargor;
- (d) the issue of a notice by the Commissioner of Taxation, or its delegate, under:
  - (i) section 218 or section 255 of the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth);

- (ii) section 260-5 of Schedule 1 of the *Taxation Administration Act 1953* (Cth); or
- (iii) any similar Statute,

which will affect any Charged Property; and

- (e) an Authority taking any step in respect of Taxes or an amount owing to an Authority ranking ahead of the floating charge with respect to any Charged Property.

**"Event of Default"** has the meaning given in clause 6.1.

**"Financial Liability"** means any present or future, actual or contingent indebtedness in respect of any financial accommodation, bill of exchange, credit or hedging arrangement, finance lease or hire purchase arrangement or any guarantee or other assurance given in respect of any such indebtedness.

**"Insolvency Provision"** means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**"Intellectual Property"** means all patents, trademarks, copyrights, registered designs, trade secrets, confidential information and other intellectual property at any time held by, or registered in the name of, a Chargor or which a Chargor at any time has benefit of, has an interest in or is entitled to use.

**"Marketable Security"** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**"Obligations"** means all the liabilities and obligations of the Chargors (whether directly or pursuant to a guarantee or indemnity in respect of a Chargor) to the Chargee under or by reason of any Project Agreement to which a Chargor is a party, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Charge;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Chargor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Chargee comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Charge, including, any assignment of any liability or obligation or of this Charge; or



- (i) the capacity in which the Chargor and the Chargee comes to owe or be owed that liability or obligation.

**"Permitted Security Interest"** means:

- (a) a Security Interest created under any Project Agreement;
- (b) a Security Interest arising by operation of law in the ordinary course of business and securing obligations which are not overdue;
- (c) any arrangement constituted by retention of title in connection with the acquisition of goods in the ordinary course for business or any right of set off in the ordinary course of business;
- (d) a Permitted Encumbrance as defined in the Debt Financing Documents (except in relation to subparagraph (f) where the prior written consent of the Chargee is also required); and
- (e) any other Security Interest to which the Chargee has given prior written consent.

**"Power"** means any right, power, authority, discretion, remedy or privilege conferred on the Chargee, Receiver or any attorney or agent appointed under this Charge, by any Project Agreement, by Statute, or by law or equity.

**"Prior Charge"** means:

- (a) the charge granted pursuant to deed of charge between the Security Trustee and each Chargor dated on or about the date of this Charge;
- (b) the mortgage pursuant to the mortgage of the Maintenance Site Lease between the Security Trustee and the Trustee dated on or about the date of this Charge; and
- (c) any substitute security granted to a new chargee as part of a permitted refinancing and any collateral security required to be provided by a Chargor pursuant to the foregoing.

**"Project Contract"** means the agreement titled "Rolling Stock PPP Project Contract" between the Trustee and the Chargee dated on or about the date of this Charge.

**"Receiver"** means a receiver or receiver and manager appointed by the Chargee under this Charge and if more than one, then each of them, and also any servant, agent or delegate of any of them.

**"Secured Money"** means all money the payment or repayment of which from time to time forms part of the Obligations.

**"Security Interest"** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person.

**"Statute"** means any legislation of the Parliament of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia in force at any time, and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation.

**"Trust"** means the trust named the Reliance Rail Trust, created by the Trust Deed.

**"Trust Deed"** means the constitution of the Trust dated on or about the date of this Charge and executed by the Trustee.

### 1.3 Interpretation

In this Charge:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Charge) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to any Statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Charge, and a reference to this Charge includes all schedules, exhibits, attachments and annexures to it;
- (h) 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;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to "\$" or **"dollar"** is to Australian currency;
- (k) a reference to the Charged Property includes any part of it; and
- (l) all accounting terms used in this Charge have the meaning given to them under Australian accounting standards and statements of accounting concepts.

### 1.4 Inconsistency with Debt Finance Side Deed

In the event of any inconsistency between the terms of the Debt Finance Side Deed and this Charge, the terms of the Debt Finance Side Deed will prevail.

### 1.5 Trustee's capacity

The provisions of clause 1.15 of the Project Contract are incorporated into this deed by reference as if set out here in full.



## **1.6 Governing law**

This Charge is governed by and will be construed according to the laws of the New South Wales.

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## **2. Charge**

### **2.1 The Charge**

By this Charge:

- (a) the Surety as beneficial owner; and
- (b) the Trustee as trustee of the Trust,

charges the Charged Property to the Chargee to secure the satisfaction of the Obligations and the payment to the Chargee of the Secured Money.

### **2.2 Assets over which this Charge is fixed**

This Charge will operate as a fixed charge over the Charged Property listed below (whether present or future) which does not constitute stock-in-trade of the Business:

- (a) all real and leasehold property, and all fixtures and improvements on that property;
- (b) all Capital;
- (c) all machinery, vehicles, fittings, furniture, plant and equipment, computer software and hardware;
- (d) all of the Chargors' right, title and interest in and to all documents, contracts, rights and records relating to the Business and any other business transaction of the Chargors, including all right, title and interest of the Chargors in the Project Agreements (including all choses in action arising in favour of the Chargors in connection with the Project Agreements) other than any bank account of the Chargor or rights in respect of a bank account of the Chargor;
- (e) the goodwill of the Business and the Chargors' right, title and interest in and to all Approvals, if any;
- (f) all the Chargors' right, title and interest in and to all Security Interests, Marketable Securities, negotiable instruments, documents of title and Intellectual Property;
- (g) all insurance policies effected or maintained for the benefit of the Chargors and all proceeds under such insurance policies, if any; and
- (h) the Trustee's rights against the Trust and, if any, the beneficiaries of the Trust,

with the intention that each item of future property described in this clause 2.2 will be specifically charged to the Chargee at the time it is acquired by a Chargor. This Charge will operate as a floating charge as regards all other Charged Property.

### **2.3 Dealing with property subject to floating charge**

Subject to any contrary provision in any Project Agreement, a Chargor may in respect of any part of the Charged Property which is subject to the floating charge created by this Charge,



deal with, dispose of and pay or apply or otherwise do anything with that part of the Charged Property in the ordinary course of its business.

## **2.4 Automatic crystallisation of floating charge**

Subject to the Debt Finance Side Deed, if any Event of Crystallisation occurs, the floating charge created by each Chargor by this Charge will at that time automatically crystallise and immediately become a fixed charge over that part of the Charged Property which was not the subject of the fixed charge immediately before that occurrence.

## **2.5 Notice of conversion**

By notice in writing to the relevant Chargor, the Chargee may convert or reconvert its security under this Charge in respect of any asset or class of asset specified in that notice:

- (a) from a floating charge to a fixed charge, if any Event of Crystallisation occurs;  
or
- (b) from a fixed charge to a floating charge, at any time.

A conversion will be effective from the moment of receipt of the notice.

## **2.6 Prospective liability**

For the purpose only of section 282(3) of the *Corporations Act 2001* (Cth), the specified maximum amount of the prospective liability secured by this Charge is \$10 billion. The nature of the prospective liability is as shown on the notice lodged with this Charge with the Australian Securities and Investments Commission. Nothing in this clause 2.6 will limit, or put the Chargee under any obligation to do any act or thing so as to increase, the amount of the money secured by this Charge.

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# **3. Representations and warranties**

## **3.1 Chargor's representations and warranties**

- (a) The Surety represents and warrants to the Chargee that:
  - (i) it has good title to charge the relevant Charged Property as beneficial owner in the manner provided in this Charge, and, subject only to the Prior Charge, the relevant Charged Property is free of all Security Interests (other than the Permitted Security Interests and those in favour of the Chargee);
  - (ii) it is duly registered and remains in existence;
  - (iii) the execution, delivery and performance of this deed does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
  - (iv) it has taken all corporate and other action required to enter into this deed and to authorise the execution and delivery of this deed and the satisfaction of its obligations under it;
  - (v) this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
  - (vi) it subsists and is properly constituted;

- (vii) except as contemplated by the Equity Documents, it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (viii) it has no subsidiaries;
- (ix) except as disclosed in writing to the Chargee prior to the date of this deed, it is not a member of any consolidated group for purposes of the *Income Tax Assessment Act 1997* (Cth);
- (x) no PPP Co Events of Default or PPP Co Termination Events have occurred or are subsisting;
- (xi) it is not in default of its material obligations under any RailCorp Project Agreement;
- (xii) it has not traded since its incorporation other than for the purposes of entering into the Project Agreements and has no liabilities other than those that have arisen in connection with entering into the Project Agreements;
- (xiii) except as contemplated by the Debt Finance Side Deed, subject to laws from time to time, its obligations under this deed will rank ahead of, and its obligations under each Project Agreement (other than this deed) will rank at least equally with, all its present and future unsecured obligations;
- (xiv) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (xv) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on its business, assets or financial condition;
- (xvi) there has been no material change in its financial condition (since its incorporation) or the financial condition of the Core Contractors (since the date of their last audited accounts) which would prejudice its ability to perform its obligations under the Project Agreements;
- (xvii) the most recently published financial statements of the Core Contractors have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Core Contractors and are unqualified for the period in question;
- (xviii) it is not aware of any material facts or circumstances that have not been disclosed to the Chargee and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed; and
- (xix) it has provided to the Chargee all material documents relating to the financing of the Project.

(b) The Trustee represents and warrants to the Chargee that:



- (i) it has good title to charge the relevant Charged Property in the manner provided in this Charge, and, subject only to the Prior Charge, the relevant Charged Property is free of all Security Interests (other than the Permitted Security Interests and those in favour of the Chargee); and
- (ii) all of its representations and warranties in the Project Contract are true or, if not yet made, will be true when made.

### **3.2 Representations and warranties repeated**

- (a) The Surety represents and warrants to the Chargee that except for the representations and warranties contained in clauses 3.1(a)(ix), 3.1(a)(x), 3.1(a)(xi), 3.1(a)(xii), 3.1(a)(xv), 3.1(a)(xvi), 3.1(a)(xvii) and 3.1(xviii), each representation and warranty in this Charge will be repeated on each day whilst any of the Secured Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.
- (b) The Trustee represents and warrants to the Chargee that except for the representations and warranties contained in clauses 38.2(h), 38.2(i), 38.2(j), 38.2(k), 38.2(n), 38.2(o), 38.2(p) and 38.2(w) of the Project Contract, each representation and warranty in the Project Contract will be repeated on each day whilst any of the Secured Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

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## **4. General covenants**

### **4.1 Satisfaction of Obligations**

Each Chargor will satisfy, or procure the satisfaction of, the Obligations in the manner provided in this Charge or in any Project Agreement.

### **4.2 Prior Charge**

Each Chargor will duly and punctually pay all money secured by, and comply with all its obligations contained or implied in, the Prior Charge and every other security (including any Permitted Security Interest) taking priority over this Charge. Nothing in this clause 4.2 will affect the prohibition on Security Interests contained in clause 5.1(a).

### **4.3 Chargee's priority**

To the extent that the assets of the Trust are charged to the Chargor to secure the Chargor's rights of indemnity or exoneration, the Chargor acknowledges and agrees that that charge will at all times and for all purposes be postponed to rank after this charge.

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## **5. Covenants concerning the Charged Property**

### **5.1 Restrictions in relation to the Charged Property**

Each Chargor will not without the Chargee's prior written consent or as expressly permitted in any other Project Agreement or contemplated in the Debt Finance Side Deed:

- (a) **(No Security Interests):** create, purport or attempt to create or permit to exist any Security Interest howsoever ranking other than a Permitted Security Interest over any part of the Charged Property;

- (b) **(No sale, lease etc.):** sell, convey, assign, transfer, lease or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest other than the Prior Charge or a Permitted Security Interest in any part of the Charged Property whilst that part of the Charged Property is subject to the fixed charge created in this Charge;
- (c) **(Not to prejudice):** do or permit any act whereby the Charged Property becomes or could be liable to surrender, forfeiture or cancellation or becomes prejudiced in any manner;
- (d) **(Ordinary course):** subject to this Charge, deal with or attempt to deal with the Charged Property other than in the ordinary course of its business; or
- (e) **(Take any step):** take any step towards doing any of these things.

## 5.2 Protection of Charged Property

At the request of the Chargee, each Chargor will take or defend all legal proceedings in a manner which is not inconsistent with the Project Contract that the Chargee reasonably considers necessary or desirable for the preservation, protection or recovery of the Charged Property, provided that the Chargee may only make such a request if an Event of Default subsists.

## 5.3 Chargee assumes no obligations

The Chargee will not be deemed by virtue of this Charge to have assumed any obligation of any Chargor under any Approval or Statute.

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## 6. Events of Default

### 6.1 Events of Default

Each of the following events is an Event of Default whether or not the cause is beyond the control of the Chargors or any other person:

- (a) the occurrence of any event or circumstance specified in clause 50.1 (PPP Co Termination Events) of the Project Contract;
- (b) a failure by the Trustee to comply with its obligations under clause 51.2 (If option to acquire Cars following termination is exercised) or clause 52 (End of Contract Term arrangements); or
- (c) subject to clause 43.1(b) of the Project Contract, without the Chargee's prior written consent, there occurs the appointment of a new or additional trustee of the Trust, any resettlement of the Trust, any variation of the Trust Deed, any vesting or distribution of any assets of the Trust, any breach of trust by the Trustee, the Trustee for any reason loses or ceases to be entitled to its right of indemnity against the assets of the Trust or, as a result of the act or omission of the Trustee the assets of the Trust are diminished or made less accessible to the Chargee

### 6.2 Rights of the Chargee

Subject to the Debt Finance Side Deed, if any Event of Default occurs and while it subsists, at the option of the Chargee and notwithstanding any delay or previous waiver of the right to exercise that option, the Secured Money becomes immediately due and payable on demand, and all Powers not previously exercisable become exercisable.



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## 7. Receivers: appointment and Powers

### 7.1 Appointment of Receiver

While an Event of Default is subsisting, the Chargee may, subject to the Debt Finance Side Deed:

- (a) appoint in writing any person or persons to be a receiver or receiver and manager of the Charged Property;
- (b) withdraw the appointment of that Receiver as to the Charged Property; and
- (c) (in case of the removal, retirement or death of any Receiver) appoint another person instead of that Receiver.

### 7.2 Joint Receivers

If more than one person is appointed as a Receiver of the Charged Property, the Chargee may specify whether the appointment, and the Powers of each appointee, will at its option be joint, or joint and several. If no specification is made, the appointment and the Powers of each person will be deemed to be joint and several.

### 7.3 Remuneration of Receiver

The Chargee may fix the rate of remuneration of any Receiver, which rate will not exceed the standard hourly rate from time to time charged by the firm of which the Receiver is a member for work of the level carried out by the Receiver.

### 7.4 Agent of the Chargor

Every Receiver will be the agent of each relevant Chargor which will be solely responsible for all acts and omissions by, and the remuneration of, the Receiver.

### 7.5 Powers of Receiver

Without the need for any consent by any Chargor, each Receiver will have all of the powers specified in section 420 of the *Corporations Act 2001* (Commonwealth), and in addition to those and any other Powers, will have all of the following powers:

- (a) **(Take possession)**: to take possession or control of or make use of the Charged Property or relinquish possession or control;
- (b) **(Convert to money)**: to convert, liquidate and reduce the Charged Property into money;
- (c) **(Lease)**: whether or not the Receiver has taken possession, to lease or licence the Charged Property in the name of a Chargor or otherwise, for any period, and on any terms, or to vary or terminate a lease or licence;
- (d) **(Carry on business)**: to carry on or concur in carrying on each Business and to effect all insurances required to be effected or maintained by a Chargor under the Project Contract and do all acts which a Chargor might do in the ordinary conduct of that Business for the protection or improvement of the Charged Property;
- (e) **(Borrow or raise money)**: to borrow or raise from the Chargee or any other person any money which may be required for any purpose, and to secure any

money borrowed or raised by the grant of any Security Interest over the Charged Property (whether in the name of a Chargor or otherwise) so that the Security Interest ranks in priority to, pari passu with, or after, this Charge. The Chargee will not be bound to inquire as to the necessity or propriety of any Financial Liability nor be responsible for the misapplication or non-application of any money so borrowed or raised;

- (f) (**Engage**): to engage consultants, contractors, professional advisers, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which he is interested, and that person may charge for his services as if he had been independently retained at a salary or remuneration determined by the Receiver) and the Receiver may act on any advice given by that person;
- (g) (**Conduct works**): to repair, renew, replace, renovate or clean the Charged Property, to erect any new buildings or make any improvements to any land forming part of the Charged Property, and to demolish, alter, rebuild or extend any existing buildings on the Charged Property;
- (h) (**Sell property**): whether or not in possession, to sell or concur in selling all or any of the Charged Property by public auction, private treaty or tender, for cash or on credit, in one lot or in parcels, with or without special conditions as to title or the time and the mode of payment of purchase money and on any other terms as the Receiver thinks fit, with power to defer payment of any part of the purchase money, whether or not secured by an Security Interest from the purchaser, and to buy in and to rescind or vary any contract for sale, and to resell without being responsible for loss;
- (i) (**Contracts for sale**): to exercise all or any rights, powers and remedies of the Chargor under any contract for sale and to execute those contracts, transfers, applications for transfer, assignments and assurances of all or any part of the Charged Property in the name and on behalf of a Chargor or otherwise, and to do all other acts and things for implementing and completing any sale that the Receiver deems necessary;
- (j) (**Sever and sell fixtures**): to sever fixtures belonging to a Chargor and to sell them separately from any other part of the Charged Property;
- (k) (**Invest proceeds against contingencies**): if any of the Secured Money is contingent, to invest, deposit or hold the Charged Property in a form or mode of investment for the time being as the Receiver in its absolute discretion thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;
- (l) (**Enter into contracts**): if permitted by the terms of the Project Contract or the Debt Financing Documents, to enter into any contract or arrangement with any person for any purpose connected with this Charge or the Charged Property or in furtherance of any Power, on such terms and conditions as the Receiver in its absolute discretion thinks fit, including granting or conferring options to, in favour of or exercisable by any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with the Charged Property;
- (m) (**Perform contracts**): to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Chargor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights



forming part of the Charged Property or entered into in the exercise of any Power;

- (n) **(Take proceedings)**: to institute, conduct or defend any proceedings in law, equity or bankruptcy, and to submit to arbitration, mediation or conciliation, in the name of a Chargor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Charged Property or otherwise;
- (o) **(Compromise)**: to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Charged Property, to grant to any person involved time or other indulgence, and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Chargee;
- (p) **(Appeal)**: to appeal against or to enforce any judgment or order in respect of the Charged Property;
- (q) **(Bankrupt debtors and wind-up companies)**: to make debtors bankrupt and to wind-up companies and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Charged Property or for the security or other benefit of the Chargee;
- (r) **(Delegate)**: with the Chargee's approval, to delegate to any person for any time, any of the Powers, including this power of delegation;
- (s) **(File)**: to file all certificates, registrations and other documents and to take any and all action on behalf of the Chargor which the Chargee or Receiver believes is necessary to protect, preserve or improve any or all of the Charged Property and the rights of a Chargor and the Chargee in respect of any agreement for sale, and to obtain for the Chargee all of the benefits of this Charge and any Project Agreement; and in particular, the placing of the Chargor into liquidation or the appointment of a Receiver will be deemed to be an event against which the Chargee may protect its rights;
- (t) **(Make calls)**: to call and get in Capital;
- (u) **(Operate bank accounts)**: other than any bank account regulated by the Debt Financing Documents, to open or operate any bank account in a Chargor's name (whether alone or jointly) to the exclusion of the Chargor, and to deposit or withdraw any money to the credit of that account, and to sign and indorse or to authorise others to sign and indorse in the name of the Chargor cheques, promissory notes bills of exchange and other negotiable instruments;
- (v) **(Do all other things necessary)**: to do all things necessary to perform and observe any of a Chargor's covenants contained in this Charge; and
- (w) **(Receiver's discretion)**: to do all other acts and things without limitation as the Receiver thinks expedient,

and any further powers and discretions as the Chargee confers on the Receiver by notice in writing to the Receiver for the purposes referred to in this clause 7.5.

## 7.6 Indemnity

The Chargee may give any indemnities to the Receiver concerning the performance of the Receiver's duties as are permitted by law, except for the Receiver's fraud, gross negligence or

wilful misconduct. If the Chargee is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

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## **8. Chargee's Powers**

### **8.1 Exercise of Power**

At any time while an Event of Default is subsisting, the Chargee may, subject to the Debt Finance Side Deed, without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the Powers conferred on a Receiver or which would be conferred on a Receiver if appointed as if those Powers had been expressly conferred on the Chargee;
- (b) exercise all other Powers; and
- (c) appoint an agent or joint and several agents and delegate the Powers to it or them (in which case clauses 7.1, 7.3 and 7.6 will apply as if it or they were appointed as a Receiver).

### **8.2 Act jointly**

The Chargee or the Receiver may, subject to the Debt Finance Side Deed, exercise any of the Powers in conjunction with the exercise of similar powers by any other Encumbrancee of the Charged Property or by any receiver appointed by that other Encumbrancee, and may enter into and give effect to agreements and arrangements with that other Encumbrancee or receiver as the Chargee or Receiver thinks fit.

### **8.3 WorkCover, workers' compensation, etc.**

While an Event of Default is subsisting, the Chargee may from time to time debit and charge to the Chargor all costs, charges and expenses, legal or otherwise, including premiums for insurance and compensation and other money paid or payable by the Chargee or any Receiver appointed by the Chargee or any attorney of a Chargor appointed under any Statute relating to Workcare, WorkCover and/or workers' compensation.

### **8.4 Power of Attorney**

- (a) Each Chargor irrevocably appoints the Chargee and each of its directors, managers or attorneys from time to time, and any Receiver appointed under this Charge severally, as an attorney of the Chargor, with power while an Event of Default is subsisting, and subject to the Debt Finance Side Deed:
  - (i) to do all acts which ought to be done by the Chargor under this Charge or to exercise any Power;
  - (ii) to demand, sue for, recover and receive the Charged Property from any person, in the name of and on behalf of the Chargor, or in the name of the Chargee or an attorney appointed under this Charge;
  - (iii) to take further action and to execute further instruments which are, or are in the opinion of the Chargee, necessary or desirable to secure more satisfactorily the payment of the Secured Money or to sell or otherwise deal with or enhance the Charged Property; and
  - (iv) to appoint (and remove at will) at any time any person as a substitute for an attorney.



- (b) Each Chargor ratifies and confirms now and for the future all actions lawfully undertaken by or on behalf of any attorney under this Power of Attorney.
- (c) Each Chargor declares that this Power of Attorney will continue in force until all actions taken under it have been completed, notwithstanding the discharge of this Charge.

## 8.5 Chargee may make good any default

If a Chargor defaults in duly satisfying any of the Obligations, the Chargee may, without prejudice to any other Power, but subject to the provisions of the Project Contract and the Debt Finance Side Deed, do all things and pay all money necessary or expedient in the opinion of the Chargee to make good or to attempt to make good that default to the satisfaction of the Chargee.

## 8.6 Notice for exercise of Powers

- (a) Subject to the provisions of the Project Contract and the Debt Finance Side Deed, the Powers may be exercised by the Chargee and the Receiver any time while an Event of Default is subsisting, without any notice or lapse of time being necessary unless required by a law which cannot be excluded or by any inconsistent provision in this Charge.
- (b) Subject to the provisions of the Project Contract and the Debt Finance Side Deed, one day is fixed as the period for which:
  - (i) default must continue in the satisfaction of the whole or any part of the Obligations, or in the payment of any part of the Secured Money, including interest, before the Chargee may serve any notice in writing as required by any Statute affecting the Powers; and
  - (ii) default must continue after the service of notice before any power of sale may be exercised.

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## 9. Application of money

### 9.1 Priority of payments

Subject to the Debt Finance Side Deed, all money received by the Chargee or by the Receiver as a result of the exercise of the Powers may be applied in the following order:

- (a) **(Incidental to exercise of Powers):** in payment of all costs, charges, expenses and disbursements incurred in or incidental to the exercise or attempted exercise of any of the Powers;
- (b) **(Outgoings):** in payment of any other outgoings as the Receiver or the Chargee thinks fit;
- (c) **(Payment of Prior Charge):** in payment of the Prior Charge and other Security Interests of which the Chargee is aware which have priority to this Charge, in the order of their priority;
- (d) **(Payment of Secured Money):** in payment of the balance of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;
- (e) **(Subsequent Security Interests):** in payment of subsequent Security Interests of which the Chargee is aware in the order of their priority; and

(f) **(Surplus)**: the surplus (if any) belongs to the Chargor but does not carry interest.

If the Chargee receives money in connection with this Charge in respect of Secured Money contingently or prospectively owing, the Chargee must deposit that amount in an interest bearing deposit account until that amount becomes actually payable or no longer falls within the definition of "Secured Money". At that time the Chargee may retain for its own account the amount which is then actually payable to it, and the balance must be paid in accordance with paragraphs (a) - (f) above. Any such deposit account must be an interest bearing account.

## **9.2 Money received**

In applying any money towards satisfaction of the Secured Money, each Chargor will be credited only with as much of the money available for that purpose as will be actually received by the Chargee or the Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

## **9.3 Application of payments or credits**

Each of the Chargee and the Receiver has an absolute discretion to apply any payment or credit received by it under this Charge in reduction of any part or parts of the Secured Money, whenever and on whatever account it became secured, notwithstanding any principle or presumption of law to the contrary or any direction given at the time of receipt, and without the need to communicate its election to any person.

## **9.4 Reliance on certificate**

In paying any other Encumbrancee under clause 9.1, the Chargee and the Receiver may rely on a certificate from that Encumbrancee as to the amount secured. They are not bound to inquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Security Interest.

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# **10. Liability and release**

## **10.1 Continuing obligation**

This Charge constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation, or any other matter or thing. Without limiting the generality of the foregoing, each indemnity in this Charge is a separate additional and continuing obligation and will survive the discharge of this Charge. Unless otherwise agreed, payment by the Chargee will not be a pre-condition to liability under any indemnity.

## **10.2 Personal liability**

Notwithstanding any payout figure quoted or other form of account stated by the Chargee, no grant of full or partial satisfaction of or discharge from this Charge by the Chargee will release any Chargor from personal liability under this Charge or under any Project Agreement until all the Secured Money has in fact been received by the Chargee and is not liable to be disgorged, notwithstanding that the quotation or statement of account has arisen from the mistake, negligence, error of law or error of fact of the Chargee, its servants or agents.

## **10.3 Settlement conditional**

If, because of the law relating to an Insolvency Provision, any security or payment given or made by a Chargor to the Chargee in relation to the Secured Money is avoided, repaid or reduced, the Chargee will be entitled to recover the value or amount of the security or payment



avoided, repaid or reduced from the Chargor subsequently as if that settlement or discharge had not occurred.

#### 10.4 Surety's liability not affected

The liability of the Surety under this Charge:

- (a) **(Absolute)**: is absolute and is not subject to the execution of any Project Agreement or any other document by any person or to the performance of any condition precedent or subsequent, including, as between the Trustee and the Chargee;
- (b) **(Not Affected)**: will not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the Surety from its liability including, any of the following:
  - (i) the occurrence of any Event of Default;
  - (ii) the receipt by the Chargee of any payment, dividend or distribution under any Insolvency Provision in relation to the Trustee;
  - (iii) any Project Agreement or any payment or other act the making or doing of which would otherwise have formed part of the Obligations being or becoming or being conceded to be illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future, including:
    - A. any Statute, other law or principle of equity;
    - B. any act or omission by any person;
    - C. any legal limitation, disability or incapacity of the Trustee;
    - D. any improper exercise of a Power;
    - E. any Power being suspended or postponed by Statute, any court order or otherwise; or
    - F. any Insolvency Provision;
  - (iv) the Chargee accepting any Collateral Security;
  - (v) the Chargee granting time, waiver or other indulgence or concession to, or to making any composition or compromise with, the Trustee;
  - (vi) the Chargee forbearing or neglecting to exercise any remedy or right it has for the enforcement of any Project Agreement or any of the Obligations;
  - (vii) any laches, acquiescence or other act, neglect, default, omission or mistake by the Chargee;
  - (viii) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Chargee or the Trustee of any Project Agreement or any of the Obligations;
  - (ix) any variation to any Project Agreement or any of the Obligations, whether or not the variation is substantial or material or imposes an additional liability on or is onerous on the Trustee;

- (x) the full, partial or conditional release or discharge by the Chargee or by operation of law, of any person from any Project Agreement or any of the Obligations;
- (xi) the release of any property from any Collateral Security or the substitution of any property in place of any other property now or after the date of this charge the subject of a Collateral Security;
- (xii) the Chargee wasting, destroying, abandoning, prejudicing or not perfecting, maintaining, preserving, enforcing or realising or not properly enforcing or realising any Collateral Security;
- (xiii) the failure to obtain any Collateral Security or the loss or impairment of any Collateral Security by operation of law or otherwise, whether or not the same is in breach of an express or implied condition to obtain or preserve such Collateral Security or in breach of any equitable duty which might otherwise have been imposed on the Chargee;
- (xiv) the postponement or loss of the priority attaching to any Collateral Security;
- (xv) the opening or operation of any new account with the Chargee by the Trustee;
- (xvi) any change in membership (whether by death or retirement of an existing member, admission of a new member or otherwise) or name of any partnership, firm or association in which the Trustee is a member;
- (xvii) the transfer or assignment of the benefit of any Project Agreement or any of the Obligations;
- (xviii) any failure by the Chargee to disclose to the Surety any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Chargee relating to or affecting the Trustee at any time before or during the currency of any Project Agreement, whether prejudicial or not to the rights and liabilities of the Surety and whether or not the Chargee was under any duty of disclosure; or
- (xix) the Chargee entering into a covenant with the Trustee not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any scheme of arrangement or reconstruction, prove in any bankruptcy or liquidation or do any other act, matter or thing in respect of the liability of the Trustee.

## **10.5 Insolvency**

The Surety must not lodge any proof of debt or similar claim under any Insolvency Provision in relation to the Trustee in competition with the Chargee. The Surety irrevocably appoints the Chargee as its attorney to, if any Event of Default occurs and while it subsists, prove in the insolvency of the Trustee for all money which the Surety may be entitled from the Trustee. Subject to the Debt Finance Side Deed, the Surety acknowledges that the Chargee will retain and carry to a suspense account and appropriate at the discretion of the Chargee any amount so received until the Chargee has been paid the whole of the Secured Money.

## **10.6 Claim on the Chargor**

The Chargee is not required to make any claim or demand on the Chargors, or to enforce any



Project Agreement or any other Power before making any demand on the Surety.

## **10.7 Waiver of rights**

The Surety agrees not to exercise any right to contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against the Trustee until all the Secured Money has been received by the Chargee and is not required to be disgorged under any Insolvency Provision.

## **10.8 Release of Charged Property**

The Chargee must grant a release of the Charged Property from this Charge if at the time the release is to be provided, none of the Secured Money is owing (whether actually, contingently, or prospectively), none of the Obligations remain to be satisfied, and it is not reasonably foreseeable that there could be any money owing or Obligations to be satisfied in the future.

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# **11. Protection and indemnity**

## **11.1 Waiver by Chargor**

Prior to the grant of a release by the Chargee of the Charged Property from this Charge under clause 10.8 and without limiting any rights of the Chargor under any other Project Agreement, each Chargor waives in favour of the Chargee:

- (a) all rights against the Chargee and any other person, estate or assets as far as is necessary to give effect to any provision of this Charge;
- (b) promptness and diligence on the part of the Chargee, and any other requirement that the Chargee take any action or exhaust any right against any other person before enforcing this Charge; and
- (c) all rights inconsistent with the provisions of this Charge, including any rights of contribution or subrogation which a Chargor might otherwise be entitled to claim or enforce.

## **11.2 No liability for loss**

Neither the Chargee nor any Receiver will be liable or otherwise accountable for any omission, delay, mistake, loss or irregularity in or concerning the exercise, attempted exercise, non-exercise or purported exercise of any Power, except for fraud, gross negligence or wilful misconduct.

## **11.3 No liability to account**

Neither the Chargee nor any Receiver will, by reason of the Chargee or the Receiver entering into possession of the Charged Property, be liable to account as mortgagee or chargee in possession, or for any loss on realisation, or for any default, omission, delay or mistake for which a mortgagee or chargee in possession might be liable. The liability of the Chargee and of the Receiver will be for actual receipts only.

## **11.4 No conflict**

The Chargee and any Receiver may exercise any Power notwithstanding that the exercise of that Power involves a conflict between any duty owed to the Chargor by the Chargee or that Receiver and any duty owed by the Chargee or Receiver to any other person, or the interests of the Chargee or Receiver. No contract will be void or voidable by virtue of that conflict of duty

or interest, nor will the Chargee or Receiver be liable to account to a Chargor or any other person for any money or property as a result of that conflict.

## **11.5 No notice or enforcement**

The Chargee need not give any notice of this Charge to any debtor of a Chargor, or to any purchaser, or to any other person, or enforce payment of any money payable to the Chargor, or realise any of the Charged Property, or to take any steps or proceedings for that purpose.

## **11.6 Indemnity**

Each Chargor will on demand indemnify and keep the Chargee indemnified in respect of all costs, expenses, liabilities, losses, and Taxes on supplies incurred by the Chargee or the Receiver (other than due to fraud, gross negligence or wilful misconduct of the Chargee or the Receiver, as the case may be):

- (a) in the exercise, attempted exercise or non-exercise of any Power, including those resulting from any mistake, oversight, error of judgment or want of prudence on the part of the Chargee or the Receiver;
- (b) by reason of this Charge;
- (c) in respect of any act or omission for which the Chargee or the Receiver is exonerated by this Charge; and
- (d) by reason of the Chargee redeeming or taking a transfer of any Security Interest ranking in priority to or *pari passu* with this Charge,

and the Chargor will defend all actions, proceedings, claims or demands brought by any person in relation to any matter the subject of this indemnity.

## **11.7 Protection of persons dealing with the Chargee or Receiver**

No person acquiring any money or asset from or paying or handing over any money or asset to or otherwise dealing with the Chargee, the Receiver or any attorney appointed under this Charge, or to whom is tendered for registration an instrument executed by the Chargee, the Receiver or any attorney appointed under this Charge, will be:

- (a) bound to inquire:
  - (i) whether any Event of Default has occurred;
  - (ii) whether any of the Secured Money is owing or payable;
  - (iii) whether the Receiver or attorney has been properly appointed;
  - (iv) as to the propriety or regularity of the exercise or purported exercise of any Power; or
  - (v) as to any other matter or thing;
- (b) affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or
- (c) concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication,



and the irregular, improper or unnecessary exercise of any Power will be, as regards the protection of any such person, deemed to be authorised by a Chargor, and valid.

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## **12. Payments**

### **12.1 Money repayable as agreed or on demand**

The Secured Money will be payable by the Chargors to the Chargee in accordance with the Project Agreements.

### **12.2 Payment of interest**

The Chargors will pay interest on the Secured Money to the Chargee in accordance with the Project Contract.

### **12.3 Credit balances of other accounts**

In determining the amount of the Secured Money, no credit need be allowed by the Chargee for any credit balance in any joint or other account of a Chargor with the Chargee, or for any other money owing by the Charge to the Chargor.

### **12.4 No deduction for Taxes and no set-off or counterclaim**

All payments of Secured Money by a Chargor to the Chargee will be:

- (a) free of any set-off or counterclaim; and
- (b) subject to any Statute, without deduction or withholding for any present or future Taxes, unless a Chargor is compelled by law to deduct or withhold the same.

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## **13. Expenses, stamp duties and registration**

### **13.1 Expenses**

The Chargor on demand will reimburse the Chargee for and keep the Chargee indemnified against all reasonable expenses, including legal fees, costs and disbursements (on a solicitor/own client basis) incurred by the Chargee in connection with the exercise, enforcement, preservation, or attempted exercise, enforcement or preservation of any rights under this Charge for so long as an Event of Default is subsisting, including any expenses incurred in the evaluation of any matter of material concern to the Chargee, except to the extent incurred in connection with the fraud, negligence or wilful misconduct of the Chargee. The Chargors will bear the cost of their compliance with this Charge.

### **13.2 Stamp duties**

- (a) **(Payment of all duties):** The Chargors must pay all stamp duty, transaction, registration and similar Taxes, including fines and penalties and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Charge, or any payment, receipt or other transaction contemplated by this Charge. However, a Chargor need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Chargee in sufficient cleared funds for the Chargee to be able to pay Taxes or fees by the due date.
- (b) **(Indemnity):** Each Chargor indemnifies the Chargee against any loss or liability

incurred or suffered by it as a result of the delay or failure by the Chargor to pay Taxes in accordance with paragraph (a).

### 13.3 Registration

Each Chargor will ensure that this Charge is registered in the manner and within such time limits as may be prescribed by law to ensure the full efficacy of this Charge as a security to the Chargee in all relevant jurisdictions.

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## 14. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Charge in order to be validly given:

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

### Chargee

Name: Rail Corporation New South Wales

Address: Level 6, 18 Lee Street,  
Chippendale, New South Wales

Facsimile: 61 2 9379 4378

For the attention of: RailCorp's Representative (Rolling Stock PPP)

### Trustee

Name: Reliance Rail Pty Limited as trustee for the Reliance Rail Trust

Address: Level 6, 88 Phillip Street, Sydney NSW 2000

Facsimile: 61 2 9087 4000

For the attention of: Trustee - Project Manager

### Surety

Name: Reliance Rail Finance Pty Limited

Address: Level 6, 88 Phillip Street, Sydney NSW 2000

Facsimile: 61 2 9087 4000

For the attention of: Surety - Project Manager

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 14(b); and
- (e) is taken to be received by the addressee at the time specified in the Project Contract,



or if no time is specified therein, then:

- (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
- (ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the machine from which it was sent; and
- (iii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day which is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day, where "working day" means a day that:

- (iv) is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered; and
- (v) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year.

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## 15. Jurisdiction

Without prejudice to the operation of the dispute resolution provisions contained in clause 53 of the Project Contract, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Charge; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within inconvenient forum, if that venue falls within clause 15(a).

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## 16. Miscellaneous

### 16.1 Further assurance

Each Chargor will, and will procure that, all persons having or claiming any estate or interest in the Charged Property from time to time and at all times after the date of this Charge on the request of the Chargee and at the cost of a Chargor, will make, do and execute or cause to be made, done and executed all acts, deeds and assurances for:

- (a) more satisfactorily securing to the Chargee the payment of the Secured Money;
- (b) assuring or more satisfactorily assuring the Charged Property to the Chargee, or as the Chargee may direct; or
- (c) facilitating the exercise of any Power.

In particular, whenever requested to do so by the Chargee, each Chargor will execute in favour of the Chargee legal mortgages, transfers, assignments or other assurances of the Charged Property in terms acceptable to the Chargee.

## **16.2 Certificate of Chargee**

A certificate in writing signed by the Chargee or an officer of the Chargee certifying the amount payable by a Chargor to the Chargee or stating any other act, matter or thing relating to this Charge or any Project Agreement is conclusive and binding on the relevant Chargor in the absence of manifest error on the face of the certificate.

## **16.3 Assignment**

The Chargee may at any time assign or otherwise transfer all or any part of its rights under this Charge to any assignee of its rights under the Project Agreements. A Chargor cannot assign any of its rights under this Charge without the Chargee's prior written consent, except as expressly permitted by any other Project Agreement or by way of a Prior Charge or Permitted Security Interest.

## **16.4 Amendments**

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

## **16.5 No merger**

Neither this Charge nor any of the Powers will merge or prejudicially affect or be merged in or prejudicially affected by and the Chargor's obligations under this Charge will not in any way be abrogated or released by, any other security, any judgment or order, any contract, any cause of action or remedy, or any other matter or thing at any time existing in respect of the Secured Money.

## **16.6 Severance**

If at any time any provision of this Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Charge; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Charge.

## **16.7 Powers cumulative**

Each Power is cumulative and in addition to each other Power available to the Chargee or the Receiver.

## **16.8 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any Power by the Chargee will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other Power.
- (b) Any waiver or consent given by the Chargee under this Charge will only be effective and binding on the Chargee if it is given or confirmed in writing.
- (c) No waiver of a breach of any term of this Charge will operate as a waiver of another breach of that term or of a breach of any other term of this Charge.



## **16.9 Consents**

Any consent referred to in, or required under, this Charge from the Chargee may be given or withheld, or may be given subject to any conditions as the Chargee (in its absolute discretion) thinks fit, unless this Charge expressly provides otherwise.

## **16.10 Time of essence**

Time is of the essence in respect of each Chargor's obligations under this Charge.

## **16.11 Moratorium legislation**

To the fullest extent permitted by law, the provisions of all laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this Charge, or to delay or otherwise prevent or prejudicially affect the exercise of any Power are expressly waived.

## **16.12 Binding on each signatory**

This Charge is binding on each of the signatories whether or not any one or more of the named parties does not execute this Charge, or that there is any invalidity, forgery or irregularity touching any execution of this Charge, or that this Charge is or becomes unenforceable, void or voidable against a named party.

## **16.13 Counterparts**

This Charge may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

## **16.14 No representation by or reliance on Chargee**

The Chargors do not enter into this Charge in reliance on or as a result of any representation, promise, statement, conduct or inducement by or on behalf of the Chargee or by or on behalf of a Chargor otherwise than as set out in the Project Agreements.

Executed as a deed.

Signed for and on behalf of **Rail Corporation**  
**New South Wales ABN 59 325 778 353** in the  
presence of:



Signature of Witness

**Owen John Hayford**

Name of Witness in full

Signed sealed and delivered for and on behalf  
of **Reliance Rail Pty Limited** (in its capacity as  
trustee of the Reliance Rail Trust) by

GREG PAULINE

its Attorney under a Power of Attorney dated

24 NOVEMBER 2006

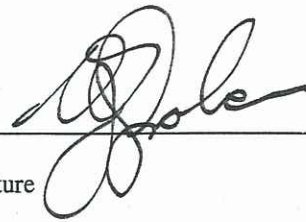
and the Attorney declares that the Attorney has not  
received any notice of the revocation of such Power  
of Attorney, in the presence of:



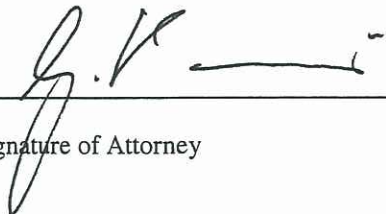
Signature of witness

**Matthew Stott**

Name of witness in full



Signature



Signature of Attorney

Greg C. Pauline .

Name of Attorney in full



Signed sealed and delivered for and on behalf  
of **Reliance Rail Finance Pty Limited** by

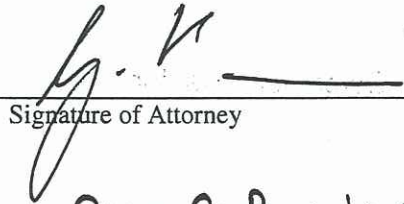
*Greg Pauline*  
its Attorney under a Power of Attorney dated  
*24 November 2006*  
and the Attorney declares that the Attorney has not  
received any notice of the revocation of such Power  
of Attorney, in the presence of:



Signature of witness

**Matthew Stott**

Name of witness in full



Signature of Attorney

*Greg C. Pauline*

Name of Attorney in full