

CLAYTON UTZ

Reliance Rail Undertakings Deed

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

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

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

Reliance Rail Finance Pty Limited ACN 120 380 805

FGIC UK Limited

Syncora Guarantee Inc

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

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

www.claytonutz.com

Our reference 80054519

Legal\306116184.2

Contents

1.	Definitions and interpretation	3
1.1	Definitions	3
1.2	Interpretation	6
1.3	Performance	7
1.4	Obligations several	7
1.5	Debt Financing Document	7
1.6	The State's delegate	7
1.7	Notice of Appointment	8
1.8	Appointees of State Delegate	8
1.9	State entities	8
1.10	State Act	9
2.	Restructure Effective Time	9
3.	Top Up Funding	9
3.1	Provision of Top Up Funding	9
3.2	Terms of Top-Up Amount	9
3.3	State not entitled to withhold payment of Subscription Amount	10
3.4	Re-imbursment of Top-Up Amount	10
4.	Debt draw down	11
4.1	Undertakings	11
4.2	Change of circumstance	11
5.	Cash flow and use of funds	11
5.1	Lock Up	11
5.2	Use of funds	12
6.	Undertakings	12
6.1	Release of Financial Guarantees	12
6.2	Assignment and guarantee of State's obligations	12
7.	Payments	12
7.1	Direction	12
7.2	Method of payment	13
7.3	No deduction	13
8.	Representations, warranties and acknowledgements	13
8.1	By each party generally	13
8.2	Reliance on representations and warranties	13
8.3	When representations made and warranties given	13
9.	Termination	13
9.1	Termination for failure to satisfy Conditions	13
9.2	Effect of termination	13
10.	GST	14
10.1	Interpretation	14
10.2	Reimbursements and similar payments	14
10.3	GST payable	14
10.4	Variation to GST payable	14
11.	Notices	14

11.1	How notice to be given	14
11.2	When notice taken to be received	15
12.	General	16
12.1	Amendments.....	16
12.2	Consents.....	16
12.3	Costs.....	16
12.4	Counterparts	16
12.5	Further acts and documents	16
12.6	No merger.....	16
12.7	Severance.....	17
12.8	Waivers.....	17
12.9	Governing law and jurisdiction.....	17
	Schedule 1 Mutual representations and warranties	18

Reliance Rail Undertaking Deed dated **3** February 2012

Parties

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

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

Reliance Rail Pty Limited ACN 120 380 805 of Suite 2, Level 9, 333 George Street, Sydney, New South Wales, 2000 (**Operating Company**) acting in its own right and as trustee of the Reliance Rail Trust (**Operating Trust**)

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

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

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

Background

- A. The parties have agreed to certain financial restructuring transactions in respect of the Project and the Reliance Rail Group Companies agreed to enter into the various undertakings set out in and subject to the terms of this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

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

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

Capped Reimbursement Amount has meaning given to it in clause 3.4(a)(iv).

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

Common Terms Deed has the meaning given in the Restructure Co-Ordination Deed.

Condition has the meaning given in the Capital Commitment Deed.

Contributor has the meaning given to it in clause 3.1(b).

Control means:

- (a) in relation to a corporation:

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

Corporations Act means the Corporations Act 2001 (Cth).

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

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

Distribution has the meaning given in the Common Term Deed.

Distribution Date has the meaning given in the Common Term Deed.

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

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

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

Existing Investors Side Deed has the meaning given in the Restructure Co-Ordination Deed.

Facilitation Fee has the meaning given in the Deed of Amendment (Unitholders Agreement) (as at the date of its execution).

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

Financial Guarantors means each of FGIC and Syncora.

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

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

GST has the meaning given in the GST Act.

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

Junior Debt has the meaning given in the Common Terms Deed.

Locked Up Cash means the funds that are retained in the Equity Distribution Account pursuant to clause 5.1.

Manufacture Delay Account has the meaning given in the Common Terms Deed.

MDA Retained Amount has the meaning given in the Capital Commitment Deed.

Noteholder has the meaning given in the Capital Commitment Deed.

Permitted Transferee has the meaning given in the Capital Commitment Deed.

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

Profit Amount has the meaning given in the Existing Investors Side Deed (as at the date it is executed).

Project has the meaning given in the Project Contract.

Project Contract has the meaning given in the Restructure Co-Ordination Deed.

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

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

Relevant Trust has the meaning given in the Restructure Co-Ordination Deed.

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

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

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

Restructure Co-Ordination Deed means the deed entitled "Restructure Co-Ordination Deed" dated on or about the date of this deed between between the State, Rail Corporation of NSW, Reliance Rail Holdings Pty Limited in its own right and as trustee of the Reliance Rail Holding Trust, Reliance Rail Pty Limited in its own right and as trustee of the Reliance Rail Trust, Reliance Rail Finance Pty Limited, FGIC UK Limited, Syncora Guarantee Inc, Permanent Custodians Limited, BNY Trust (Australia) Registry Limited, Downer EDI Rail Pty Limited and Hitachi Australia Pty Limited and each Unitholder and each Noteholder of Reliance Rail Holdings Pty Limited.

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

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

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

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

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

Stapled Securities has the meaning given in the Capital Commitment Deed.

State Act has the meaning given in clause 1.10.

State Delegate has the meaning given in clause 1.6.

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

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

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

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

Subsidiary has the meaning given in the Corporations Act.

Top-Up Amount has the meaning given in the Capital Commitment Deed.

Top-Up Funding has the meaning given in clause 4.1 of the Capital Commitment Deed.

Trigger Event has the meaning given in the Existing Investors Side Deed (as at the date it is executed).

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

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

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

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

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

1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

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

1.3 Performance

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

1.4 Obligations several

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

1.5 Debt Financing Document

This deed is a Debt Financing Document for the purposes of the Debt Financing Documents.

1.6 The State's delegate

- (a) The State may at any time by written notice to each other party to this deed appoint any person or persons acting severally as its delegate (**State Delegate**), replace any such State Delegate with another person or persons or terminate the appointment of any such State Delegate at its sole discretion.

- (b) Each State Delegate will carry out all of the State's functions under the Restructure Agreements, or any of them, to which the State is a party as agent of the State.
- (c) Each party to this deed acknowledges and agrees that each State Delegate may do all acts, deeds and things (including, but not limited to, the giving of directions, instructions and other notices) on behalf of the State under any Restructure Agreement and that such acts, deeds and things are effective for the purposes of any act of the State under the Restructure Agreements.
- (d) The State agrees to:
 - (i) be bound by anything done or not done by each State Delegate or any appointee of a State Delegate under any Restructure Agreement to which the State is a party; and
 - (ii) ratify anything done or not done by each State Delegate or any appointee of a State Delegate under any Restructure Agreement to which the State is a party.
- (e) For the purposes of this clause 1.6, a State Delegate can be any person who, for the time being, holds or is authorised to act in a position of the State the title of which is nominated by the State under clause 1.7 or by written notice after the date of this deed under and in accordance with clause 1.1(a).

1.7 Notice of Appointment

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

1.8 Appointees of State Delegate

- (a) Each State Delegate may:
 - (i) by written notice to each other party to this deed, appoint persons to exercise any of the functions of the State Delegate under the Restructure Agreements, or any of them;
 - (ii) not appoint more than one person to exercise a specific function at any one time; and
 - (iii) revoke any appointment under clause 1.1(a) by written notice to each other party to this deed.
- (b) All references to State Delegate include a reference to an appointee under this clause 1.8.

1.9 State entities

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

1.10 State Act

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

2. Restructure Effective Time

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

3. Top Up Funding

3.1 Provision of Top Up Funding

- (a) Finance Company will promptly give notice to each Financial Guarantor if it forms the view that the Condition specified in clause 3.1(d) (Acceptable refinancing achievable) of the Capital Commitment Deed will not be satisfied by [REDACTED].
- (b) The parties acknowledge that the Financial Guarantors or any of them (**Contributor**) may exercise the right to provide Top Up Funding for the purposes of, and on the terms set out in, clauses 3.2 to 3.4.
- (c) If a Financial Guarantor exercises its right to provide Top Up Funding, Finance Company must not unreasonably withhold its acceptance of that Top Up Funding.

3.2 Terms of Top-Up Amount

Subject to compliance with the Debt Financing Documents the Top-Up Amount must be provided on the following terms:

- (a) the Top-Up Amount must not rank ahead of the Subscription Securities in priority of payment or the Stapled Securities to be purchased by the State in accordance with the Existing Investors Side Deed;
- (b) the Contributor will not, as a result of providing the Top-Up Amount, be entitled to be issued any Stapled Securities (or to acquire any other equity or security in the Reliance Rail Group Companies) which would dilute the Subscription Securities or the Stapled Securities to be purchased by the State in accordance with the Existing Investors Side Deed;
- (c) the Top-Up Amount must be provided after the Operating Company (as trustee of the Operating Trust) has applied the MDA Retained Amount in accordance with clause 2.1 of the RSM Contractor Undertakings Deed;
- (d) the Top-Up Amount must only be used by the Obligors to repay the Senior Debt in order to enable the Condition in clause 3.1(d) of the Capital Commitment Deed to be satisfied;

- (e) following the provision of the Top-Up Amount, the Condition in clause 3.1(d) of the Capital Commitment Deed will be capable of being satisfied;
- (f) the Top-Up Amount must be paid to the Reliance Rail Group Companies prior to Subscription Completion;
- (g) if the Condition in clause 3.1(d) of the Capital Commitment Deed is satisfied, the Top-Up Amount must be reimbursed by the State in accordance with and subject to clause 4.4 of the Capital Commitment Deed; and
- (h) the terms of the Top-Up Amount must otherwise be on terms acceptable to the State acting reasonably.

3.3 State not entitled to withhold payment of Subscription Amount

In the event that any Top-Up Amount is provided (and that Top-Up Amount is sufficient to enable the Condition in clause 3.1(d) of the Capital Commitment Deed to be satisfied), the State shall not be entitled to withhold payment of the Subscription Amount on the basis that the Condition in clause 3.1(d) of the Capital Commitment Deed has not been satisfied.

3.4 Re-imbusement of Top-Up Amount

- (a) If:
 - (i) the Contributor provides the Top-Up Amount to the Reliance Rail Group;
 - (ii) the terms of the Top-Up Amount comply with clause 3.2; and
 - (iii) a Trigger Event occurs and the Profit Amount is a positive number,

the State must, subject to clause 3.4(b), re-imburse the Contributor out of the Profit Amount following the occurrence of the Trigger Event for an amount of the Top-Up Amount equal to:

 - (iv) in respect of the first occurrence of a Trigger Event, the lesser of [REDACTED] and the Top-Up Amount (**Capped Reimbursement Amount**); and
 - (v) if more than one Trigger Event occurs and the State has made a payment to the Contributor in accordance with this clause 3.4, the amount equal to the Capped Reimbursement Amount less the amount of any payment to the Contributor in accordance with this clause 3.4.
- (b) Notwithstanding clause 3.4(a), if the Profit Amount following the occurrence of a Trigger Event is less than the Capped Reimbursement Amount, the State is only obliged to re-imburse the Contributor for the amount equal to the relevant Profit Amount.
- (c) For the avoidance of doubt, if the Profit Amount is a negative number, the State is not obliged to re-imburse the Contributor for the Top-Up Amount.

4. Debt draw down

4.1 Undertakings

Each Reliance Rail Group Company confirms that its board of directors is satisfied (based on financial advice given to them by external financial advisers and legal advice given to them by external legal advisers) that, based on current circumstances and market conditions prevailing at the date of this deed, and subject to:

- (a) the execution of the Restructure Agreements; and
- (b) the occurrence of the Restructure Effective Time,

in each case occurring prior to the date on which a Utilisation Notice must be issued under the Senior Loan Note Subscription Agreement in order to ensure that the first Utilisation occurs in accordance with the Utilisation Schedule, the Finance Company will issue the necessary Utilisation Notices under the Senior Bank Loan Note Subscription Agreement requesting Utilisations in accordance with the Utilisation Schedule.

4.2 Change of circumstance

Finance Company will inform the other parties to this deed immediately if market conditions have changed or events have occurred the result of which is that the Finance Company will no longer be able to issue the Utilisation Notices as contemplated by clause 4.1.

5. Cash flow and use of funds

5.1 Lock Up

- (a) On each Distribution Date that occurs during the Effective Period, each Reliance Rail Group Company will ensure that all funds that remain in the Proceeds Account on that Distribution Date after all payments required to be made from the Proceeds Account under paragraphs 4.12(a) to (n) of Schedule 8 of the Common Terms Deed have been made, are transferred to the Equity Distribution Account provided such transfer is permitted under the Debt Financing Documents (including clause 4.4 of the Common Terms Deed).
- (b) In accordance with the directions received under the Unitholders Agreement to make such payments, any funds standing to the credit of to the Equity Distribution Account must only be withdrawn from that account to be applied:
 - (i) firstly, towards meeting Project Costs to the extent that the Reliance Rail Group Companies have no other source of funds to pay Project Costs and subject to compliance with Schedule 8 of the Common Terms Deed;
 - (ii) secondly, towards payment of the Capital Commitment Fee on the dates those fees are required to be paid under clause 10.1 of the Capital Commitment Deed; and
 - (iii) thirdly, towards payment of the Facilitation Fee on the dates those fees are required to be paid under clause 2 of the Deed of Amendment (Unitholders Agreement).
- (c) In accordance with the directions received under the Unitholders Agreement to make such payments, any funds remaining in the Equity Distribution Account after making the payments set out in paragraph (b) above must be retained in that account

until they are applied in repayment of the Senior Debt in accordance with clause 5.2.

5.2 Use of funds

The Reliance Rail Group Companies will, on or before the Subscription Funding Date, to the extent permitted by the Debt Financing Documents (including subject to the provisions of Schedule 8 of the Common Terms Deed) utilise:

- (a) firstly, all Locked Up Cash;
- (b) secondly, all of the Subscription Amount; and
- (c) thirdly, if and to the extent required, the [REDACTED] it is permitted to use from the Manufacture Delay Account for this purpose pursuant to the RSM Contractor Undertakings Deed,

to repay Senior Debt to the extent required to enable the Condition in clause 3.1(d) of the Capital Commitment Deed to be satisfied.

6. Undertakings

6.1 Release of Financial Guarantees

With effect from Subscription Completion, each Reliance Rail Group Company irrevocably and unconditionally agrees to give notice under

- (a) clause 7.6 of the Senior Intercreditor Deed to a Financial Guarantor if either of clauses 7.6(a)(i)(A) or (B) applies to that Financial Guarantor advising that Financial Guarantor that it will not be required to provide a further financial guarantee in respect of each tranche of Senior Debt that is refinanced; and
- (b) clause 7.12 of the Senior Intercreditor Deed to a Financial Guarantor if any of clauses 7.12(a)(i)(A), (B) or (C) applies to that Financial Guarantor advising that Financial Guarantor that it will not be required to provide a further financial guarantee in respect of each tranche of Junior Debt that is refinanced.

6.2 Assignment and guarantee of State's obligations

The State may not assign or otherwise transfer (in whole or in part) its rights and obligations under the Capital Commitment Deed unless:

- (a) it has complied with the requirements of clause 11 of the Capital Commitment Deed; and
- (b) the Intercreditor Agent has approved the terms of the guarantee to be provided by the State under clause 11.2 of the Capital Commitment Deed.

7. Payments

7.1 Direction

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

7.2 Method of payment

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

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

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

7.3 No deduction

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

8. Representations, warranties and acknowledgements

8.1 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.

8.2 Reliance on representations and warranties

Each party acknowledges that the other party has entered this deed, in reliance on the representations and warranties in this clause 8.

8.3 When representations made and warranties given

Each of the representations and warranties given under this clause 8 is given as at the date of this deed and as at the time immediately prior to the Restructure Effective Time.

9. Termination

9.1 Termination for failure to satisfy Conditions

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

9.2 Effect of termination

If this deed is terminated then:

- (a) subject to clause 3.3 of the Restructure Co-Ordination Deed, the provisions of this deed will cease to have effect; and
- (b) each party retains the rights it has against the others in respect of any breach of this deed occurring before termination under this clause 9.

10. GST

10.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.

10.2 Reimbursements and similar payments

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

10.3 GST payable

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

10.4 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this deed or any other Restructure Agreement varies from the additional amount paid by the Recipient under clause 10.3 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any ruling, advice, document or other information received by the Supplier from the Australian Taxation Office in relation to any supply made under this deed or any other Restructure Agreement will be conclusive as to the GST payable in relation to that supply. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 10.3.

11. Notices

11.1 How notice to be given

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

- (a) may be given by personal service, post or facsimile;
- (b) must be in writing;

(c) must be addressed to each party as follows:

State

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

Holding Company

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

Operating Company

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

Finance Company

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

FGIC

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

Syncora

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

(d) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(e) must be delivered by hand or posted by prepaid post to the address or sent by fax to the number of the addressee in accordance with clause 11.1(b).

11.2 When notice taken to be received

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

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

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

12. General

12.1 Amendments

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

12.2 Consents

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

12.3 Costs

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

- (a) negotiating, preparing, executing and performing each Restructure Agreement; and
- (b) any subsequent consent, agreement, approval, waiver or amendment relating to any Restructure Agreement.

12.4 Counterparts

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

12.5 Further acts and documents

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

12.6 No merger

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

12.7 Severance

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

12.8 Waivers

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

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

12.9 Governing law and jurisdiction

This deed is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 12.9.

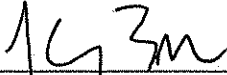
Schedule 1 Mutual representations and warranties

- (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) **(Corporate authority)** It has taken all action that is necessary or desirable to authorise its entry into this deed and its carrying out the transactions that it contemplates.
- (d) **(No insolvency of corporation)** If the party is a corporation, none of the following events has occurred in relation to that party:
- (i) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar officer has been appointed in respect of that party;
 - (ii) an application has been made to court or a resolution has been passed or an order has been made for the winding up or dissolution of that party;
 - (iii) that party 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:
 - A. in respect of a Financial Guarantor who has settled, compromised or made other arrangements in respect of any policies and / or claims in the ordinary course of its ordinary business; or
 - B. in the case of each Reliance Rail Group Company, negotiations with its Creditors (or any of them) in relation to a restructure of any of its Debt or for the provision of additional funding; or
 - (iv) that party has been declared or taken under any applicable law to be insolvent or that party's board of directors have resolved that it is, or is likely to become at some future time, insolvent.
- (e) **(Documents effective)** This deed constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration.
- (f) **(No contravention)** Neither its execution of this deed nor the carrying out by it of the transactions that it contemplates, does or will:
- (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iii) if the party is a corporation, contravene its constitution (if any).
- (g) **(Trust)** If the party is a trustee, that party represents and warrants to the other parties that:

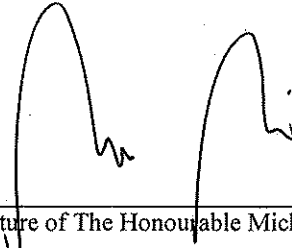
- (i) **(Power)** it has power to enter into, deliver and perform this deed in its capacity as trustee of the Relevant Trust and to carry out the transactions contemplated by this deed;
- (ii) **(Trust validly created)** the Relevant Trust has been validly created and is in existence;
- (iii) **(Trustee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

Executed as a deed.

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



Signature of witness

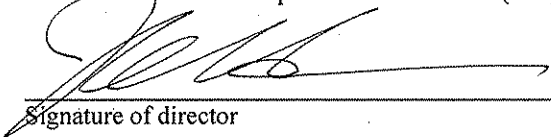


Signature of The Honourable Michael Baird MP, Treasurer

KLAY DWIED BROWN

Full name of witness

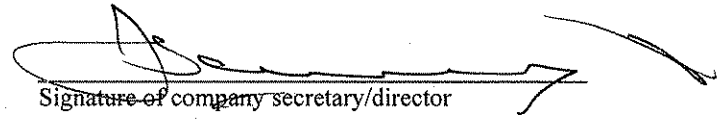
Executed by **Reliance Rail Holdings Pty Limited** in its own right and as trustee of the Reliance Rail Holding Trust in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

JOHN HARKNESS

Full name of director

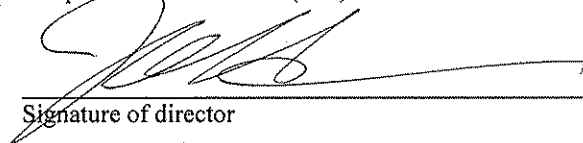


Signature of company secretary/director

JOHN DAVENPORT

Full name of company secretary/director

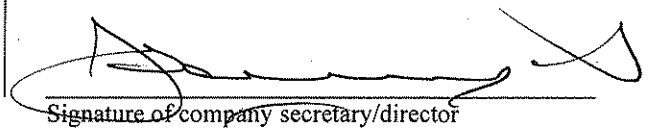
Executed by **Reliance Rail Pty Limited** in its own right and as trustee of the Reliance Rail Trust in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

JOHN HARKNESS

Full name of director

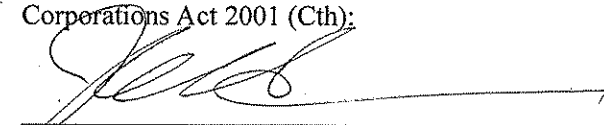


Signature of company secretary/director

JOHN DAVENPORT

Full name of company secretary/director

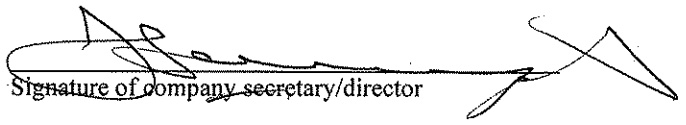
Executed by Reliance Rail Finance Pty Limited in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

JOHN HARKNESS

Full name of director



Signature of company secretary/director

JOHN DAVENPORT

Full name of company secretary/director

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

Signature of director

Full name of director

Signature of director

Full name of director

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

By:

Name: Claude Le Blanc
Title: Chief Financial Officer

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

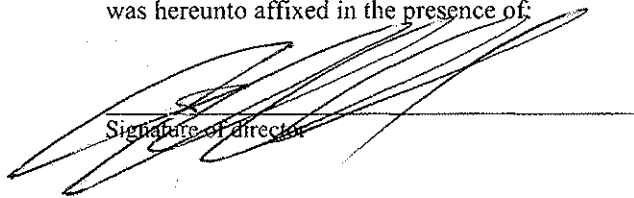
Signature of director

Full name of director

Signature of company secretary/director

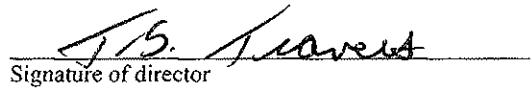
Full name of company secretary/director

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



Signature of director

John S. Dubel
Full name of director



Signature of director

Timothy S. Travers
Full name of director

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

By:

Name: Claude Le Blanc
Title: Chief Financial Officer

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

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

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

Signature of director

Full name of director

Signature of director

Full name of director

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

By: _____


Name: Claude Le Blanc
Title: Chief Financial Officer

