



RailCorp

Right of Entry Deed for Cardiff Maintenance Depot

Rail Corporation New South Wales
ABN 59 325 778 353

Lessor

EDI Rail Pty Ltd
ABN 92 000 002 031

Lessee

Reliance Rail Pty Ltd
ACN 111 280 427

Reliance

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Right of Entry Deed for Cardiff Maintenance Depot made at Sydney on 3 December 2016

Parties

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

EDI Rail Pty Ltd ABN 92 000 002 031 of 2B Factory Street, Granville, New South Wales ("**Lessee**")

Reliance Rail Pty Ltd ACN 111 280 427 as trustee for the Reliance Rail Trust of Level 6, ABN AMRO Tower, 88 Phillip Street, Sydney, New South Wales ("**Reliance**")

Background

- A. The Lessor owns the Premises.
- B. Pursuant to the Lease, the Lessor has leased the Premises to the Lessee.
- C. Reliance and the Lessee have entered into, or will in the future enter into, the Rolling Stock Manufacture Contract and the Option Deed.
- D. The parties are entering into this document so that Reliance may exercise certain rights upon the Lessee becoming insolvent, defaulting under the Rolling Stock Manufacture Contract or otherwise defaulting under the Lease.

Operative provisions

1. Definitions and interpretations

1.1 Definitions

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in the city of Sydney, New South Wales.

"**Date of Final Completion**" has the meaning given in the Rolling Stock Manufacture Contract.

"**Debt Finance Side Deed**" means the deed so entitled dated on or about the date of this document between the Lessor, Reliance, PPP Co Finance Co and the Security Trustee on behalf of the Debt Financiers.

"**Debt Financiers**" has the meaning given in the Project Contract.

"**Encumbrance**" means a mortgage, charge, pledge, lien, hypothecation or title retention arrangement, a right of set off or right to withhold payment of a deposit or other money, or an easement, restrictive covenant, caveat or similar restriction over property, or an agreement to create any of them or to allow any of them to exist.

"**Enforcement Event**" means the occurrence of an Insolvency Event in respect of the Lessee or when Reliance issues a notice to the Lessee under clause 50.2 of the Rolling Stock Manufacture Contract in respect of a Rolling Stock Manufacturer Termination Event.

"**Event of Default**" means any of the events specified in clause 18.1 of the Lease.

"**Excluded Tax**" means a Tax on net income in any jurisdiction, other than:

- (a) a Tax that is calculated on or by reference to the gross amount of any payment derived by a party under this document or the transactions that this document

contemplates (unless the Tax is imposed because the party has not given its tax file number to the person who made the payment); or

- (b) a Tax that is imposed because a party is regarded as being subject to tax in a jurisdiction solely because it is a party to this document or because it is participating in the transactions that this document contemplates.

"Government Agency" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"Insolvency Event" means, in relation to a party, the occurrence of any of the following events:

- (a) if an application is made (other than for a frivolous or vexatious reason) for the winding up of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by Reliance (such approval not be unreasonably withheld) before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) if a party passes a resolution for its winding up, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by Reliance (such approval not be unreasonably withheld) before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) if a receiver, receiver and manager, provisional liquidator, trustee for creditors or in bankruptcy or analogous person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party;
- (e) if a party or any other person appoints an administrator to the party;
- (f) if a party:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is taken to fail to comply with a statutory demand in accordance with section 459F of the Corporations Act;
- (g) if a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors; and

(h) any analogous or similar act or procedure to those referred to above for the relief of financial distressed debtors is done or entered into or applied, voluntarily or involuntarily to a party.

"**Lease**" means the lease dated ^{1 December} November 2006 between the Lessor and the Lessee in respect of Lots 1, 2 and 3 in Deposited Plan 880487, being part of Folio Identifier 100/1100258.

"**Leasehold Default Notice**" has the meaning given to that term in clause 4.1.

"**Non-Project Works**" means works carried out for purposes other than for the Project (RSM).

"**Option Deed**" means the document so entitled between the Lessee and Reliance dated on or about the date of this document.

"**Permitted Encumbrance**" means a lien that arises by operation of law in the ordinary course of ordinary business where the amount secured is not overdue or is being diligently contested in good faith.

"**PPP Co Finance Co**" means Reliance Rail Finance Pty Ltd (ACN 120 380 805).

"**Premises**" means each of the premises demised under the Lease.

"**Project Contract**" means the document entitled "RailCorp Rolling Stock PPP – Project Contract" between Rail Corporation New South Wales (ABN 59 325 778 353) and Reliance dated on or about the date of this document.

"**Project (RSM)**" has the meaning given in the Rolling Stock Manufacture Contract.

"**RailCorp Deed of Charge**" means the deed of charge dated on or about the date of this document between the Lessor as chargee and Reliance and the PPP Co Finance Co as chargors.

"**Reliance Rail Trust**" means the trust constituted by the Trust Deed.

"**Removable Items**" has the meaning given to that term in Special Condition 1(n) of the Lease.

"**Revival Date**" means if a Leasehold Default Notice has been issued:

- (a) if no Step-In Notice is issued in accordance with clause 5.1 or is withdrawn, the date the period in clause 5.1 expires or the date of the withdrawal; and
- (b) otherwise, the date of expiry of the Step In Period.

"**Rolling Stock Manufacture Contract**" means the document entitled "Rolling Stock PPP – Rolling Stock Manufacture Contract" between Reliance, the Lessee and Hitachi Australia Limited (ABN 34 075 381 332) related to the design, development, manufacturing and commissioning of railway cars and simulator training facilities dated on or about the date of this document.

"**Rolling Stock Manufacturer Termination Event**" has the meaning given in the Rolling Stock Manufacture Contract.

"**Security Interest**" means an Encumbrance that secures the payment of money or the performance of an obligation, or any other interest or arrangement of any kind that gives a creditor priority over other creditors in relation to any property.

"**Security Trustee**" has the meaning given in the Project Contract.

"**Set**" has the meaning given in the Rolling Stock Manufacture Contract.

"Step-In Date" has the meaning given to that term in clause 5.1(a).

"Step-In Event" has the meaning given to that term in clause 4.2.

"Step-In Notice" has the meaning given to that term in clause 5.1(a).

"Step In Period" means the period from the Step In Date up to and including the earlier of:

- (a) the date specified in a notice issued in accordance with clause 5.7(a); and
- (b) the date of expiry of the Lease.

"Step Out Date" means the date the Step-In Period expires or terminates.

"Stock-in-Trade" means any of the items described in clause 18.4 of the Lease.

"Tax" means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a Government Agency, together with any related interest, penalty, fine or other charge other than one that is imposed on net income in any jurisdiction.

"Trust Deed" means the constitution of the Reliance Rail Trust dated 5 October 2005 and executed by Reliance.

1.2 Definitions in Lease

Subject to clause 1.1, terms that are defined in the Lease have the same meanings in this document.

1.3 Rules for Interpreting this Document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) Reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.

- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing.

1.4 Application of Document

This document is of full force and effect notwithstanding any provision of the Lease, and shall remain in full force and effect for so long as any of the Lessee's obligations under the Rolling Stock Manufacture Contract remain outstanding.

2. Term

This document commences upon the parties executing this document and ends on the date of Final Completion of Set 78.

3. Acknowledgments and consents and agreements of Lessor

The Lessor:

- (a) acknowledges and consents to the creation of the rights in favour of Reliance under this document; and
- (b) acknowledges and agrees that:
 - (i) the granting of this document is not and enforcement of Reliance's rights under this document will not be a breach of the Lease or give rise to an Event of Default; and
 - (ii) Reliance is not subject to any duty or obligation under the Lease by reason only of the granting of this document or the enforcement of Reliance's rights under this document, except as specifically set out under this document.

4. Events of Default

4.1 Notice of Event of Default under the Lease

The Lessor shall not issue a notice under clause 18.2 of the Lease ("**Termination Notice**") without giving to Reliance a prior written notice ("**Leasehold Default Notice**") stating:

- (a) the proposed date of issue of the Termination Notice (which must not be less than 20 Business Days from the date of the Leasehold Default Notice);
- (b) the proposed date for termination of the Lease; and
- (c) details of the relevant Event of Default.

4.2 Step-In Events

Reliance may (but is not obliged to) exercise the rights described in clause 5 of this document should any event the subject of a Leasehold Default Notice or an Enforcement Event (each a Step In Event) occur.

5. Reliance's Step-In Rights

5.1 Step-In Notice

- (a) At any time after the occurrence of a Step In Event, commencing upon:
 - (i) receipt by Reliance of a Leasehold Default Notice and ending one Business Day prior to the proposed date of issue of a Termination Notice; or
 - (ii) issue by Reliance of a notice to the Lessor notifying the occurrence of an Enforcement Event,

Reliance may (but is not obliged to) give notice to the Lessor ("**Step-In Notice**") stating that Reliance intends to step in pursuant to clause 5.3 and specifying a date (Step-In Date) being no later than 20 Business Days from the date of the Step-In Notice, on which such action will be taken.

- (b) Other than as set out in clause 5.6, the Lessor must not issue a Termination Notice or take other enforcement action under the Lease, including exercising its right to re-enter the Premises, during the period from the issue of a Leasehold Default Notice until the latest date by which a Step-In Notice may be given, and, if a Step-In Notice is given until the Step-Out Date.

5.2 Consultation

Within 5 Business Days of the issue of the Step-In Notice, the Lessor and Reliance will consult to determine and make any necessary arrangements in relation to the period following the issue of the Step-In Notice.

5.3 Step In

- (a) If Reliance has issued a Step-In Notice to the Lessor and provided Reliance has complied, and continues to comply, with its obligations under this clause 5, and without limiting the other actions which Reliance may elect to take following the occurrence of an Step In Event, the Lessor will allow Reliance, at any time, to remedy an Event of Default and to exercise any rights and/or discharge any obligations which the Lessee has under the Lease and to exercise or give effect to any rights Reliance has under the Rolling Stock Manufacture Contract and the Option Deed, (including the right to (or cause or permit others to) enter the Premises to use (including for the purpose of giving effect to the obligations of the contractors under the Rolling Stock Manufacture Contract to, among other things, build and complete Sets), protect and/or remove certain assets, including Removable Items, Stock-in-Trade and the other assets described in the Option Deed) and the Lessor will not exercise any right to terminate the Lease during the Step-In Period.
- (b) Notwithstanding clause 5.3(a), Reliance, or any party claiming through it, may not exercise the lessee's rights to purchase lot 3 set out in the replacement special conditions 7 (Option to Purchase) and 8 (Preemptive Right) of the Lease
- (c) Reliance is however under no obligation to do anything under clause 5.3(a) and assumes no liability in doing so.

5.4 Reliance's agreements regarding Step In

Reliance acknowledges and agrees with the Lessor:

- (a) without limiting the liability of the Lessee under the Lease, Reliance may only exercise all or any of the rights and powers of the Lessee under or in relation to the Lease while Reliance complies with this document; and
- (b) for the avoidance of doubt, nothing in this document authorises Reliance to do any act or thing which the Lessee may not do under the Lease.

5.5 Lessor's Agreements Regarding Step-In

The Lessor acknowledges and agrees with Reliance and the Lessee that:

- (a) all acts, matters or things done or effected and all amounts expended by Reliance which would satisfy (had they been expended, done or effected by the Lessee) any of the obligations of the Lessee shall be effective, as between the Lessor and the Lessee to fully satisfy and discharge the obligation of the Lessee in respect of which such act, matter, thing or amount has been done, effected or expended;
- (b) Reliance entering the Premises and otherwise exercising its rights in accordance with this document, the Rolling Stock Manufacture Contract and the Option Deed will not, of itself or by themselves, be relied upon by the Lessor as giving rise to a right of termination of the Lease;
- (c) during any Step-In Period, but subject to clause 5.6(a), the Lessor will continue to observe the terms of and comply with the Lessor's obligations under the Lease and this document;
- (d) without limiting clause 5.5(c) above, to the extent reasonably requested by Reliance for the purpose of exercising rights under this document, the Rolling Stock Manufacture Contract and the Option Deed, the Lessor will make available the Premises to Reliance;
- (e) where Reliance has stepped in in accordance with this document, Reliance will only be responsible for liabilities contained in the Lease as follows:
 - (i) to remedy an Event of Default which it has specifically agreed to remedy under clause 5.3;
 - (ii) for liabilities arising during the Step In Period, full responsibility for liabilities it has agreed to assume and for the acts and omissions of Reliance, as if the Reliance were named in the Lease as lessee; and
 - (iii) except as expressly set out above, for liabilities arising before and after the end of the Step-In Period, no responsibility at all; and
- (f) notwithstanding any provision in the Lease or this document to the contrary, the Lessee will not be liable to the Lessor for the acts and omissions of Reliance during any Step-In Period.

5.6 Consequences of Non-compliance with Reliance's agreements regarding Step-In

- (a) The Lessor will be entitled to terminate the Lease during the Step-In Period (provided it is in fact able to do so under the terms of the Lease at that time) by written notice to the Lessee and Reliance if Reliance does not satisfy or comply with clause 5.4 in any material respect, Lessor has given notice of the non-compliance to Reliance, and Reliance has not remedied the non-compliance or overcome its effects to the reasonable satisfaction of the Lessee within 10 Business Days of receipt of the notice.

- (b) Except as set out in clause 5.6(a), during the Step-In Period the Lease shall remain in full force and effect and the Lessor's rights and obligations under the Lease will continue subject to this document.

5.7 Step-out

- (a) Reliance may, at any time during the Step-In Period, with 20 Business Days prior written notice to the Lessor, terminate the Step-In Period with effect from the date specified in that notice.
- (b) With effect from the Step-Out Date nominated in the notice referred to in clause 5.7(a) above, Reliance will be released from all of its obligations and liabilities to:
 - (i) the Lessor under the Lease; and
 - (ii) the Lessor under this document (except for accrued obligations as at the Step-Out Date).
- (c) The release under clause 5.7(b) will not affect or prejudice the continuation of the:
 - (i) Lessee's obligations to the Lessor under the Lease;
 - (ii) Lessor's obligations to the Lessee under the Lease; and
 - (iii) Lessor's and Lessee's obligations to Reliance under this document.

5.8 Third party works and property

- (a) Reliance acknowledges that the Premises are used by the Lessee for works under contracts with parties other than Reliance ("**Third Parties**") in addition to works carried out by the Lessee under the Rolling Stock Manufacture Contract ("**Third Party Works**").
- (b) If Reliance exercises its rights under clause 5.3, Reliance agrees with the Lessee, for its own benefit and for and on behalf of each Third Party, without requiring any payment by the Lessee or such Third Party, to allow a Third Party reasonable access to:
 - (i) enter the Premises to remove any of the Third Party's property on the Premises; and
 - (ii) to use the Premises to make Third Party Works safe and suitable for removal.
- (c) If Reliance exercises its rights under clause 5.3 by reason of a Step-In Event that arises other than:
 - (i) due to an Insolvency Event; or
 - (ii) where Reliance has issued a notice under clause 50.2 of the Rolling Stock Manufacture Contract due to a Rolling Stock Manufacture Termination Event subsisting under clause 50.1(h) of the Rolling Stock Manufacture Contract,

Reliance agrees to allow the Lessee reasonable access to and use of any of the Lessee's plant and equipment to complete Non-Project Works, provided that such

access and use does not affect any of Reliance's rights under this document or the Option Deed and performance of the Rolling Stock Manufacture Contract.

6. Revival of termination rights

Without prejudice to clause 5.6, if a Leasehold Default Notice has been issued and the Event of Default specified in the Leasehold Default Notice is continuing, the Lessor will be entitled on and after the Revival Date to:

- (a) exercise any rights available to it in relation to that Event of Default, including issuing a Termination Notice; and
- (b) pursue any claims and exercise any remedies, in addition to termination, which the Lessor may have against the Lessee under the Lease or otherwise against the Lessee.

7. Ownership of removable items and stock-in-trade on termination of lease

7.1 Notice of Lessor's re entry

The Lessor must promptly give Reliance written notice if:

- (a) the Lease expires and the Lessee does not remove the Removable Items and Stock-in-Trade; or
- (b) the Lessor re-enters the Premises.

7.2 Limitations on rights of re-entry and removal of Removable Items and Stock-in-Trade

The Lessee and the Lessor acknowledge and agree that:

- (a) subject to clause 7.3, Reliance shall be entitled to exercise all or any of Reliance's powers, rights, discretions and remedies available to it under the Rolling Stock Manufacture Contract and the Option Deed in respect of the Removable Items and the Stock-In-Trade (including to remove the Removable Items and Stock-in-Trade from the Premises) and Lessor shall permit Reliance to (or to cause or permit others to) enter the Premises to, and shall also permit Reliance (and any others it causes or permits) to, use (including for the purpose of giving effect to the obligations of the contractors under the Rolling Stock Manufacture Contract to among other things build and complete Sets), protect and/or remove certain assets, including Removable Items, Stock-in-Trade and the other assets referred to in the Option Deed; and
- (b) prior to the expiry of the Step-In Period:
 - (i) the Lessor will not exercise any right to re-enter the Premises; and
 - (ii) the Lessor will not exercise any right nor take any action to remove and store, dispose of or sell the Removable Items and Stock-in-Trade as may be available to the Lessor under the Lease and which it may only exercise in accordance with clause 7.3.

7.3 Failure to deal with Removable Items and Stock-in-Trade

If Reliance does not commence exercising its rights described in clause 7.2(a) including, without limitation, to commence to remove the Removable Items and Stock-in-Trade, prior to the expiry of the Step-In Period, then the Lessor may in its discretion:

- (a) remove and store the Removable Items and Stock-in-Trade;
- (b) dispose of the Removable Items and Stock-in-Trade; or
- (c) sell the Removable Items and Stock-in-Trade,

in accordance with the Lease.

The Lessor acknowledges that Reliance may continue exercising its rights under clause 7.2(a) even if the Lease has expired provided that Reliance has commenced exercising its rights prior to the expiry of the Step-In Period.

8. Representations and warranties

8.1 General representations and warranties

- (a) The Lessee represents and warrants that:
 - (i) **(status and power)** it is a company, duly incorporated and existing under Australian law and has the capacity and power to execute, deliver and perform its obligations under this document and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) **(binding obligations)** this document constitutes its valid, legal and binding obligations enforceable against it in accordance with their terms subject to equitable remedies and laws in respect of the enforcement of creditors' rights; and
 - (iii) **(no contravention)** the execution, delivery and performance of this document by it will not contravene any law to which it is subject, or any deed or arrangement binding on it.
- (b) The Lessor represents and warrants that
 - (i) **(status and power)** it has the capacity and power to execute, deliver and perform its obligations under this document and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) **(binding obligations)** this document constitutes its valid, legal and binding obligations enforceable against it in accordance with their terms subject to equitable remedies and laws in respect of the enforcement of creditors' rights; and
 - (iii) **(no contravention)** the execution, delivery and performance of this document by it will not contravene any law to which it is subject, or any deed or arrangement binding on it.
- (c) Reliance represents and warrants that:

- (i) **(power)** it has full legal capacity and power under the Trust Deed to enter into this document and to carry out the transactions that this document contemplates, as trustee of the Reliance Rail Trust;
- (ii) **(binding obligations)** this document constitutes its valid, legal and binding obligations enforceable against it in accordance with their terms subject to equitable remedies and laws in respect of the enforcement of creditors' rights; and
- (iii) **(trust authority)** all action that is necessary or desirable under the Trust Deed or at law to:
 - A. authorise its entry into this document and its carrying out of the transactions that this document contemplates;
 - B. ensure that this document is legal, valid and binding on it as trustee of the Reliance Rail Trust and admissible in evidence against it in that capacity; and
 - C. enable it to properly carry on the business of the Reliance Rail Trust,
 has been taken.

8.2 Representations and warranties regarding the Lease

- (a) The Lessor and the Lessee each separately represents and warrants that:
 - (i) **(termination)** it has no existing right to:
 - A. terminate, rescind, repudiate or vary the Lease; or
 - B. refuse to perform or observe any of its obligations under the Lease; and
 - (ii) **(all agreements)** the Lease sets out all of the agreements, arrangements and understandings between the Lessee and the Lessor relating to the Premises.
- (b) The Lessee represents and warrants that its rights under and interest in the Lease are not encumbered by any Encumbrance.

8.3 Representation and warranties regarding the Premises

The Lessor represents and warrants that it is the registered proprietor of the Premises.

8.4 Repetition of representations and warranties

The representations and warranties in this clause 8 (other than clause 8.2(a)(i) and 8.3) are taken to be repeated on each day during the continuance of the existence of the Rolling Stock Manufacture Contract.

8.5 Reliance on representations and warranties

Each party acknowledges that each other party executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this clause.

9. Undertakings

9.1 Amendment of Lease

- (a) The Lessor must not:
 - (i) make or agree to any modification, variation or amendment to the terms of the Lease, if the effect of such modification, variation or amendment may adversely affect Reliance's interest under this document, without the prior written consent of Reliance, which consent will not be unreasonably withheld or delayed; or
 - (ii) accept a surrender of the Lease.
- (b) The Lessor acknowledges that waivers, amendments or termination of the Lease by the Lessor without the consent of Reliance may not be binding on Reliance.

9.2 Assignment

- (a) Except as expressly permitted by the Project Contract, the Debt Finance Side Deed or the RailCorp Deed of Charge, Reliance must not assign, novate, transfer, mortgage, charge or otherwise deal with its interest in, or obligations under, this document without the Lessor's prior approval (which must not be unreasonably withheld).
- (b) The Lessor acknowledges and agrees that it may not assign, transfer or otherwise dispose of all or any part of its rights, benefits or obligations under this document or the Lease or the land the subject of it unless the assignee is a party acceptable to Reliance and such party has entered into a tripartite agreement on substantially the same terms as this document.
- (c) The Lessee acknowledges and agrees that it must not assign, novate, transfer or otherwise dispose of all or any part of its rights, benefits or obligations under this document or the Lease.

9.3 Lease Notices

The Lessor must give Reliance a copy of any document that is issued by it or issued to it under clause 21.3 or clause 21.4 of the Lease.

9.4 Extension of the Lease

Each of the Lessee and the Lessor undertakes to Reliance that will use its reasonable endeavours to extend the term of the Lease to a date not earlier than 7 October 2015.

10. Negative pledge

The Lessee must not :

- (a) create an Encumbrance (other than a Permitted Encumbrance) in respect of its interest in the Lease;
- (b) amend or vary, or consent to any material amendment or variation of, the Lease.

11. Indemnity

The Lessee must indemnify Reliance against, and must pay to it on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement, of any rights under this document.

12. Set-off

The Lessor acknowledges and agrees that it is not entitled to set off or deduct from any amount due from the Lessor to Reliance under the Project Contract:

- (a) any debt or other monies due from Reliance to the Lessor; and
- (b) any claim to money which the Lessor may have against Reliance whether for damages or otherwise,

in relation to this document.

13. Confidentiality

13.1 Keep confidential

Subject to clause 13.2, the parties must keep confidential all matters relating to this document and must use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matters relating to this document.

13.2 Permitted Disclosure

Clause 13.1 will not apply to:

- (a) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a party to this document;
- (b) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of breach of clause 13.1;
- (c) any disclosure which is required by any Law (including any order of a court of competent jurisdiction);
- (d) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party; and
- (e) any disclosure described in clause 47.4 of the Project Contract.

13.3 Obligations Preserved

Where disclosure is permitted under clause 13.2, other than clauses 13.2(b) and 13.2(c), the party providing the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this document.

14. Notices

14.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

14.2 When a notice is given

A notice, consent or other communication that complies with this clause 14 is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail within Australia – 3 Business Days after posting.

14.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

The Lessor

Address: Level 6, 18 Lee Street, Chippendale, NSW 2008
 Fax number: +61 2 9379 4378
 Attention: RailCorp's Representative (Rolling Stock PPP)

The Lessee

Address: 2B Factory Street, Granville, NSW 2142
 Fax number: +61 2 9637 6783
 Attention: Project Manager, Rolling Stock PPP

Reliance

Address: Level 6, 88 Phillip Street, Sydney, NSW 2000
 Fax number: +61 2 9087 4000
 Attention: PPP Co's Representative

15. Amendment and assignment

15.1 Amendment

This document can only be amended, supplemented, replaced or novated by another document signed by the parties.

15.2 Assignment

- (a) Without prejudice to clause 9.2 and subject to clause 15.2(b), any party may only dispose of, declare a trust over or otherwise create an interest in its rights under this document with the consent of the other parties.
- (b) Reliance may mortgage or charge its interest under this document under the Debt Financing Documents (as defined in the Project Contract).

16. General

16.1 Governing law

- (a) This document is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

16.2 Liability for expenses

- (a) Subject to clause 16.2(b), each party must pay its own expenses incurred in the negotiation, preparation and execution of this document.
- (b) The Lessee shall pay all costs associated with any amendment to, or any consent, approval, waiver, release or discharge of, or under, this document requested by the Lessee.

16.3 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this document.

16.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

16.5 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.

- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

16.6 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

16.7 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

16.8 Inconsistency with other documents

If this document is inconsistent with the Lease, this document prevails to the extent of the inconsistency.

16.9 Counterparts

This document may be executed in counterparts.

16.10 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

17. Capacity and survival

17.1 Capacity of Reliance

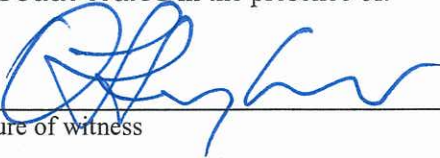
The provisions of clause 1.15 of the Project Contract are incorporated into this document by reference as if set out here in full.

17.2 Survival

The rights and obligations of the parties set out in this clause survive termination of this document.

Executed as a deed.

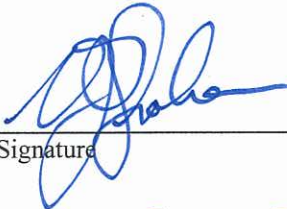
Signed for and on behalf of **Rail Corporation
New South Wales** in the presence of:



Signature of witness

Owen John Hayford

Name of witness

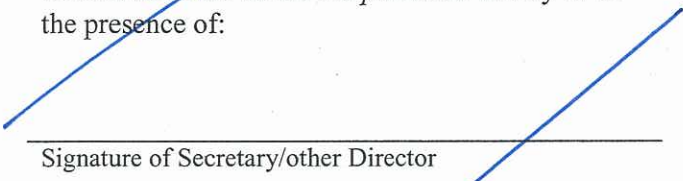


Signature

Vincent John Gahan

Name

Executed by **EDI Rail Pty Ltd** in accordance
with section 127 of the *Corporations Act* by or in
the presence of:

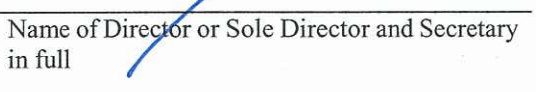


Signature of Secretary/other Director




Name of Secretary/other Director in full

Signature of Director or Sole Director and
Secretary



Name of Director or Sole Director and Secretary
in full

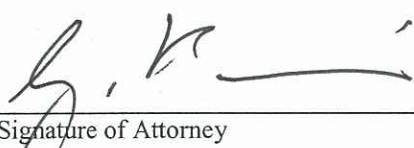
Signed for **Reliance Rail Pty Ltd** as trustee of
the Reliance Rail Trust, under power of attorney in
the presence of:



Signature of Witness

Marina Linda Tinning

Name of Witness in full



Signature of Attorney

Gray C. Kenline

Name of Attorney in full

Legal\103170357.6

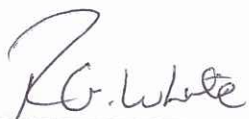
Legal\103170357.6

Executed as a deed.

Signed sealed and delivered for and on behalf of EDI Rail Pty Ltd by its Attorney under a Power of Attorney dated

1. Dec. 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

ROBERT WHITE

Name of Witness in full



Signature of Attorney

Stephen A. Hobbit

Name of Attorney in full