



RailCorp

Rolling Stock Manufacture Contract Side Deed

Rail Corporation New South Wales
ABN 59 325 778 353

RailCorp

Reliance Rail Pty Limited
as trustee of the Reliance Rail Trust
ABN 18 111 280 427

PPP Co

EDI Rail Pty Limited
ABN 92 000 002 031

EDI Rail

Hitachi Australia Pty Limited
ABN 34 075 381 332

Hitachi Australia

Downer EDI Limited
ABN 97 003 872 848

Downer EDI

Hitachi Limited
ABN 35 002 539 693

Hitachi

GHD Pty Limited
ABN 39 008 488 373

Independent Certifier

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Rolling Stock Manufacture Contract Side Deed made at Sydney on *S December*

2006

- Parties**
- Rail Corporation New South Wales ABN 59 325 778 353** of Level 6, 18 Lee Street, Chippendale, New South Wales ("**RailCorp**")
 - Reliance Rail Pty Limited ABN 18 111 280 427 (as trustee of the Reliance Rail Trust)** of Level 6, ABN AMRO Tower, 88 Phillip Street, Sydney, New South Wales ("**PPP Co**")
 - EDI Rail Pty Limited ABN 92 000 002 031** of 2B Factory Street, Granville, New South Wales ("**EDI Rail**")
 - Hitachi Australia Pty Limited ABN 34 075 381 332** of Level 3, 82 Waterloo Road, North Ryde, New South Wales ("**Hitachi Australia**")
 - Downer EDI Limited ABN 97 003 872 848** of Level 3, 190 George Street, Sydney, New South Wales ("**Downer EDI**")
 - Hitachi Limited ABN 35 002 539 693** c/- Hitachi Australia Ltd, Level 3, 82 Waterloo Road, North Ryde, New South Wales ("**Hitachi**")
 - GHD Pty Limited ABN 39 008 488 373** of 10 Bond St, Sydney, New South Wales ("**Independent Certifier**")

Background

- A. Under the Project Contract, PPP Co is required to, amongst other things, design, manufacture and commission the Cars and the Simulators.
- B. PPP Co has subcontracted its obligations to design, manufacture and commission the Cars and the Simulators to a joint venture comprising the Rolling Stock Manufacturer pursuant to the Rolling Stock Manufacture Contract.
- C. The Rolling Stock Manufacturer Guarantors have, pursuant to the Rolling Stock Manufacture Guarantees, guaranteed to PPP Co the performance of their respective subsidiary companies' obligations under the Rolling Stock Manufacture Contract.
- D. The Independent Certifier has, pursuant to the Independent Certifier Deed, agreed to provide certain services to PPP Co, the Rolling Stock Manufacturer, the TLS Contractor and PPP Co's financiers in connection with the Rolling Stock Manufacture Contract.
- E. The Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors and the Independent Certifier have agreed to grant RailCorp certain rights in relation to the Rolling Stock Manufacture Contract, the Rolling Stock Manufacture Guarantees, the Independent Certifier Deed and any Independent Verifier Deed entered into pursuant to clause 5G of the Rolling Stock Manufacture Contract.

Operative provisions

1. Definitions and interpretation

1.1 Project Contract definitions

Definitions in the Project Contract apply in this deed unless the context requires otherwise or the relevant term is defined in this deed.

1.2 Definitions

In this deed:

"Approved Nominee" means a person nominated by RailCorp and approved by the Rolling Stock Manufacturer (such approval not to be unreasonably withheld or delayed) as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of PPP Co under the Rolling Stock Manufacture Contract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub contracts) which are sufficient to enable it to perform the obligations of PPP Co under the Rolling Stock Manufacture Contract.

"Assumption Notice" means the notice referred to in clause 4.1.

"Call Option Deed (RSM)" means the document described in clause 5FF of the Rolling Stock Manufacture Contract.

"Collateral Warranty Deed" means each collateral warranty deed required to be provided in accordance with clause 5F of the Rolling Stock Manufacture Contract.

"Default Event" means:

- (a) any default (howsoever described) by PPP Co under the Rolling Stock Manufacture Contract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Rolling Stock Manufacturer to terminate, rescind, accept the repudiation of, or suspend any or all of the Rolling Stock Manufacturer's obligations under, the Rolling Stock Manufacture Contract.

"Default Event Notice" has the meaning given to it in clause 3.2(a).

"Financiers' Services" means the services so defined in the Independent Certifier Deed.

"Independent Certifier Deed" means the deed referred to in clause 5B of the Rolling Stock Manufacture Contract and, if RailCorp gives an Assumption Notice, any new deed entered into pursuant to clause 4.3.

"Independent Verifier" means any person appointed as independent verifier pursuant to an Independent Verifier Deed.

"Independent Verifier Deeds" means the deeds referred to in clause 5G of the Rolling Stock Manufacture Contract, and if RailCorp gives an Assumption Notice, any new deeds entered into pursuant to clause 4.3A.

"Project Contract" means the deed entitled "RailCorp Rolling Stock PPP Project Contract No. CO1645" between RailCorp and PPP Co dated on or about the date of this deed.

"RailCorp Cure Notice" has the meaning given to it in clause 3.2(c).

"Rolling Stock Manufacture Contract" means the contract so entitled dated on or about the date of this deed between PPP Co and the Rolling Stock Manufacturer relating to the design, manufacture and commissioning of the Cars and the Simulators and, if RailCorp gives an Assumption Notice, any new contract entered into pursuant to clause 4.2(a).

"Rolling Stock Manufacture Guarantee" means each deed of guarantee dated on or about the date of this deed from each Rolling Stock Manufacturer Guarantor in favour of PPP Co in respect of the obligations of the relevant member of the Rolling Stock Manufacturer under the Rolling Stock Manufacture Contract and, if RailCorp gives an Assumption Notice, each new guarantee entered into pursuant to clause 4.4.

"Rolling Stock Manufacturer" means EDI Rail and Hitachi Australia, jointly and severally.

"Rolling Stock Manufacturer Guarantors" means each of Downer EDI and Hitachi.

"Secured Money" has the meaning given in the NSW Rolling Stock PPP - Global Deed of Security dated on or before the date of this deed between PPP Co, the Security Trustee and others.

1.3 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

- (b) **"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 additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) 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;
- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments 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; and
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency.

1.4 Replacement body interpretation

Where a reference is made to any body or authority which ceases to exist ("**Former Body**"), that reference will be to that body or authority ("**Replacement Body**") which then serves substantially the same functions as the Former Body. Any reference to the president or other

senior officer of the Former Body will be to the president or senior officer of the Replacement Body.

1.5 No bias against drafting party

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

1.6 Business Day

If the day on or by which any thing is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.7 Inconsistencies

To the extent of any inconsistency between the terms of this deed and the Rolling Stock Manufacture Contract, this deed will prevail over the Rolling Stock Manufacture Contract.

1.8 Project Contract and Debt Finance Side Deed

Each of the Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors and the Independent Certifier acknowledge that they have received a copy of the Project Contract and the Debt Finance Side Deed.

1.9 Capacity

PPP Co enters into this deed as trustee of the Trust.

2. Securities

2.1 Rolling Stock Manufacturer acknowledgements and consents

The Rolling Stock Manufacturer:

- (a) acknowledges and consents to the grant of, subject to the Debt Finance Side Deed, security over all of PPP Co's right, title and interest in and to the Rolling Stock Manufacture Contract and the Rolling Stock Manufacture Guarantees pursuant to the RailCorp Deed of Charge;
- (b) acknowledges, subject to the Debt Finance Side Deed, the rights created under the RailCorp Deed of Charge in favour of RailCorp, including the appointment by PPP Co of RailCorp as the lawful attorney of PPP Co to do, perform and exercise all things, acts and rights under the Rolling Stock Manufacture Contract on behalf and for the account of PPP Co, pursuant to the RailCorp Deed of Charge, subject to the rights of the Security Trustee under the Debt Finance Side Deed;
- (c) acknowledges and agrees that, without limiting RailCorp's obligations under this deed, RailCorp is not subject to any duty or obligation under the Rolling Stock Manufacture Contract as a result of the RailCorp Deed of Charge; and
- (d) acknowledges that the grant of the RailCorp Deed of Charge is not, and the exercise by RailCorp of its rights under the RailCorp Deed of Charge will not, constitute a Default Event.

2.2 Rolling Stock Manufacturer Guarantors' acknowledgements and consents

Each Rolling Stock Manufacturer Guarantor:

- (a) acknowledges and consents to the grant of the security over all of PPP Co's rights, title and interest in and to the Rolling Stock Manufacture Guarantees pursuant to the RailCorp Deed of Charge;
- (b) acknowledges the rights created under the RailCorp Deed of Charge in favour of RailCorp, including the appointment by PPP Co of RailCorp as the lawful attorney of PPP Co to do, perform and exercise all things, acts and rights under the Rolling Stock Manufacture Guarantees on behalf of and for the account of PPP Co, pursuant to the RailCorp Deed of Charge, subject to the rights of the Security Trustee under the Debt Finance Side Deed;
- (c) acknowledges and agrees that, without limiting RailCorp's obligations under this deed, RailCorp is not subject to any duty or obligation under the Rolling Stock Manufacture Guarantees as a result of the RailCorp Deed of Charge; and
- (d) acknowledges that the grant of the RailCorp Deed of Charge does not, and the exercise by RailCorp of its rights under the RailCorp Deed of Charge will not, give rise to any rights by the Rolling Stock Manufacturer Guarantors to revoke or terminate the Rolling Stock Manufacture Guarantees.

3. RailCorp's right to cure Default Event

3.1 RailCorp's cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), RailCorp may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if:
 - (i) PPP Co has not, within a reasonable time of the Default Event occurring, taken steps to cure or remedy the Default Event;
 - (ii) the Debt Financiers have not, within a reasonable time of the Default Event occurring, taken steps to cure or remedy the Default Event; or
 - (iii) PPP Co or the Debt Financiers, having taken such steps, have failed to cure or remedy the Default Event within a reasonable time,and RailCorp has then given 5 Business Days prior written notice to each of PPP Co and the Rolling Stock Manufacturer of its intention to take steps to cure or remedy, or procure the cure or remedy of, the Default Event.
- (c) Upon RailCorp exercising any of its rights under this clause 3.1, PPP Co's obligations under the Rolling Stock Manufacture Contract are suspended to the extent and for such period as PPP Co is prevented from performing such obligations by RailCorp's exercise of its step-in rights.
- (d) If RailCorp exercises its step-in rights, RailCorp may, after giving reasonable prior notice to PPP Co, cease to exercise that right, and in any event, will cease to exercise its step-in rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Rolling Stock Manufacturer must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Rolling Stock Manufacture Contract unless each of the following conditions has been satisfied:

- (a) the Rolling Stock Manufacturer has given to RailCorp prior notice ("**Default Event Notice**") setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Rolling Stock Manufacture Contract, together with the statements referred to in clause 3.3;
- (b) if the Rolling Stock Manufacturer's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Rolling Stock Manufacture Contract is subject to any right of a Debt Financier to cure or remedy the Default Event, the cure or remedy period available to the Debt Financiers in respect of the Default Event under any Debt Financing Document has expired without a cure or remedy being achieved;
- (c) the Rolling Stock Manufacturer has given notice to RailCorp ("**RailCorp Cure Notice**") confirming that, either:
 - (i) the requirements of clause 3.2(b) are satisfied; or
 - (ii) the Rolling Stock Manufacturer's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Rolling Stock Manufacture Contract is not subject to any right of the Debt Financiers to cure or remedy the Default Event; and
- (d) either:
 - (i) if the Default Event is capable of cure or remedy within 20 Business Days (or such longer period as is permitted under the Rolling Stock Manufacture Contract or agreed to by the Rolling Stock Manufacturer), that Default Event has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the Rolling Stock Manufacture Contract or agreed to by the Rolling Stock Manufacturer) after the date on which RailCorp Cure Notice is given to RailCorp;
 - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, RailCorp has not commenced curing or remedying the Default Event within 20 Business Days after the date on which RailCorp Cure Notice is given and has not continued to diligently pursue that cure or remedy;
 - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, PPP Co or RailCorp (or another person on behalf of either of them) have not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the Rolling Stock Manufacture Contract or agreed to by the Rolling Stock Manufacturer) after the date on which RailCorp Cure Notice is given to RailCorp;
 - (iv) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, RailCorp does not commence and

continue to perform PPP Co's obligations under the Rolling Stock Manufacture Contract within 20 Business Days (or such longer period as is permitted under the Rolling Stock Manufacture Contract or agreed to by the Rolling Stock Manufacturer) after the date on which RailCorp Cure Notice is given to RailCorp; or

- (v) RailCorp notifies the Rolling Stock Manufacturer in writing after receipt of the RailCorp Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 Statements concerning Default Event

As part of any Default Event Notice, the Rolling Stock Manufacturer must submit to RailCorp statements of:

- (a) where the Default Event is a monetary default, the amount which must be paid to the Rolling Stock Manufacturer to remedy the Default Event;
- (b) where the Default Event is of a non-monetary nature:
 - (i) the provisions of the Rolling Stock Manufacture Contract alleged to have been breached or not fulfilled;
 - (ii) sufficient information to enable RailCorp to identify the material facts;
 - (iii) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - (iv) the time within which the specified steps can reasonably be expected to be taken; and
- (c) any rights available to the Debt Financiers, pursuant to any Debt Financing Document to which the Rolling Stock Manufacturer is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Debt Financing Documents permit the Rolling Stock Manufacturer to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Rolling Stock Manufacture Contract.

3.4 Warranty of accuracy

The Rolling Stock Manufacturer warrants to RailCorp that statements submitted by it under clause 3.3 will be, so far as reasonably practicable, true, complete and accurate statements of the amounts to which the Rolling Stock Manufacturer considers itself entitled.

3.5 Disputes as to statements

If RailCorp disputes the amount of any claim or the existence of any default referred to in a Default Event Notice:

- (a) RailCorp must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with this deed, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this deed and the Project Agreements.

3.6 Verification

RailCorp may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by PPP Co and the Rolling Stock Manufacturer (such approval not to be unreasonably withheld or delayed), to verify (at the cost of PPP Co) statements submitted by the Rolling Stock Manufacturer, and the Rolling Stock Manufacturer must (subject to such firm(s) executing an appropriate confidentiality agreement as the Rolling Stock Manufacturer may reasonably request) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 No liability

PPP Co and the Rolling Stock Manufacturer acknowledge that, without limiting the liability of PPP Co (which continues to be responsible for the performance of its obligations under the Rolling Stock Manufacture Contract), and without limiting RailCorp's obligations under clause 4.2, RailCorp will not be liable for any obligation or liability of PPP Co under the Rolling Stock Manufacture Contract by reason only of RailCorp performing PPP Co's obligations in accordance with the Rolling Stock Manufacture Contract. PPP Co and the Rolling Stock Manufacturer each release RailCorp from any such liability.

3.8 PPP Co to compensate RailCorp

Any reasonable Loss suffered or incurred by RailCorp arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from PPP Co to RailCorp.

3.9 No limitation on other rights

The exercise (or failure to exercise) by RailCorp of its rights under this clause 3 will not limit RailCorp's rights against PPP Co under the RailCorp Project Agreements or otherwise according to law.

4. RailCorp's right to assume PPP Co's rights and obligations under Rolling Stock Manufacture Contract, Rolling Stock Manufacture Guarantees, Independent Certifier Deed and any Independent Verifier Deed

4.1 Option

If RailCorp terminates the Project Contract during the Delivery Phase then RailCorp may exercise its rights under this clause 4 by giving a notice ("**Assumption Notice**") to the Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors, the Independent Certifier and any Independent Verifier.

4.2 Rolling Stock Manufacture Contract

If RailCorp gives an Assumption Notice then, subject to clause 4.5:

- (a) **(New Contract):** as from the date of the Assumption Notice:
 - (i) the Rolling Stock Manufacture Contract will be terminated;

- (ii) a new contract will be deemed to have been entered into, on the same terms as the Rolling Stock Manufacture Contract, except that:
- A. PPP Co will not be a party to the new contract;
 - B. RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will be named as a party to the new contract in substitution for PPP Co;
 - C. the terms of the new contract will be in the form of the Rolling Stock Manufacture Contract which will be deemed to be amended as required to reflect the fact that the Project Contract is at an end, and that the new contract (unlike the Rolling Stock Manufacture Contract) must operate independently of the Project Contract, on the basis that:
 - 1) the rights and obligations which RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will assume under the new contract will be equivalent to those which PPP Co would have had under the Rolling Stock Manufacture Contract had the Project Contract not been terminated;
 - 2) the rights and obligations which the Rolling Stock Manufacturer will assume under the new contract will be equivalent to those which the Rolling Stock Manufacturer would have had under the original Rolling Stock Manufacture Contract had the Project Contract not been terminated;
 - 3) any provisions of the Project Contract incorporated by reference into the Rolling Stock Manufacture Contract are incorporated in the new contract; and
 - 4) without affecting the generality of this clause 4.2(a)(ii)C, clauses 15.11(f)-(g), 17.8, 18.9, 18.10, 20.7, 53.14 and 54.6 of the Rolling Stock Manufacture Contract will be deemed to be deleted;
- (iii) the new contract will thereafter be known as the Rolling Stock Manufacture Contract;
- (iv) the Rolling Stock Manufacturer must perform for RailCorp (or, subject to clause 4.2(b), the Approved Nominee) all of the obligations of the Rolling Stock Manufacturer to PPP Co under the new Rolling Stock Manufacture Contract;
- (v) RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will assume all the rights and undertake all the obligations of PPP Co under the new Rolling Stock Manufacture Contract;
- (vi) subject to clause 4.5, the Rolling Stock Manufacturer will have the same rights against RailCorp (or, subject to clause 4.2(b), the

Approved Nominee) as it would have had against PPP Co under the Rolling Stock Manufacture Contract; and

- (vii) for the avoidance of doubt, PPP Co will not have any liability arising in connection with the new Rolling Stock Manufacture Contract.

If after the date of the Assumption Notice given under this clause 4.2, there is a dispute between RailCorp and the Rolling Stock Manufacturer as to how the terms of the new contract are deemed to have been amended pursuant to clause 4.2(a)(ii)C, then upon either party serving a written notice to this effect upon the other, the dispute will be determined by an expert as if clauses 53.4 - 53.8 of the Project Contract were incorporated in this deed but as if:

- (viii) references in those clauses to "PPP Co" were references to "the Rolling Stock Manufacturer";
- (ix) references to "the parties" were references to "RailCorp and the Rolling Stock Manufacturer";
- (x) references to a "party" were references to "RailCorp" or "the Rolling Stock Manufacturer" (as appropriate);
- (xi) references in those clauses to "Dispute" were references to this dispute; and
- (xii) the dispute had been appropriately referred to expert determination.

- (b) **(Approved Nominee):** RailCorp may request that an Approved Nominee be named as a party to the new contract in substitution for PPP Co, in which event:

- (i) the Rolling Stock Manufacturer must notify RailCorp as to whether any person nominated by RailCorp is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Rolling Stock Manufacturer to decide whether the nominated person is an Approved Nominee;
- (ii) the Rolling Stock Manufacturer must not unreasonably withhold or delay its decision on whether the nominated person is an Approved Nominee;
- (iii) the Rolling Stock Manufacturer must enter into a side deed with RailCorp and the Approved Nominee on substantially the same terms as this deed; and
- (iv) for the avoidance of doubt, PPP Co will not have any liability arising in connection with the new Rolling Stock Manufacture Contract.

- (c) **(Bonds):** If RailCorp gives an Assumption Notice then, as from the date which is the later of:

- (i) the date of the Assumption Notice; and
- (ii) the date on which the Secured Money is fully and finally repaid,

PPP Co must (with the support of the Rolling Stock Manufacturer to effect this provision) either:

- (iii) procure the novation or assignment to RailCorp (or, subject to clause 4.2(b), the Approved Nominee) of any PPP Co Delivery Phase Bonds

or Supplier Advance Payment Bonds (each as defined in the Rolling Stock Manufacture Contract) then held by PPP Co under the Rolling Stock Manufacture Contract (the "**Bonds**"); or

- (iv) procure the issue to RailCorp (or, subject to clause 4.2(b), the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds then held by PPP Co under the Rolling Stock Manufacture Contract.
- (d) **(Other documents under the Rolling Stock Manufacture Contract):** If RailCorp gives an Assumption Notice then, as from the date of the Assumption Notice, PPP Co must procure the novation or assignment to RailCorp (or, subject to clause 4.2(b), the Approved Nominee) of:
- (i) each Collateral Warranty Deed held by PPP Co (but without prejudice to the rights of PPP Co under the Collateral Warranty Deed arising out of acts or omissions which occurred prior to the date of the Assumption Notice);
 - (ii) the Call Option Deed (RSM), the assignment or novation of which EDI Rail consents to; and
 - (iii) each Expert Determination Agreement applicable to the Rolling Stock Manufacture Contract.

4.3 Independent Certifier Deed

If RailCorp gives an Assumption Notice then as from the date of the Assumption Notice:

- (a) subject to clause 4.5, the Independent Certifier Deed will be terminated (but not in respect of the rights of the Security Trustee);
- (b) a new independent certifier deed will be deemed to have been entered into on the same terms as the Independent Certifier Deed except that:
 - (i) PPP Co and the Security Trustee will not be parties to the new independent certifier deed but otherwise the parties to that deed remain the same;
 - (ii) RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will be named as a party to the new independent certifier deed in substitution for PPP Co;
 - (iii) the terms of the new independent certifier deed will be deemed to have been amended so that:
 - A. Part 2 of Schedule 2 of the Independent Certifier Deed and all references to the Financiers' Services are deleted; and
 - B. the fee payable for the Independent Certifiers' services is reduced to reflect the fact that the Independent Certifier will no longer provide the Financiers' Services;
- (c) the new independent certifier deed will thereafter be known as the Independent Certifier Deed; and
- (d) the Independent Certifier must perform for RailCorp (or, subject to clause 4.2(b), the Approved Nominee) all of the obligations of the Independent Certifier to PPP Co under the new Independent Certifier Deed;

- (e) RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will assume all the rights and undertake all the obligations of PPP Co under the new Independent Certifier Deed;
- (f) subject to clause 4.5, the Independent Certifier will have the same rights against RailCorp (or, subject to clause 4.2(b), the Approved Nominee) as it would have had against PPP Co under the Independent Certifier Deed; and
- (g) for the avoidance of doubt, PPP Co will not have any liability arising in connection with the new Independent Certifier Deed.

If after the date of the Assumption Notice there is a dispute between RailCorp and the Independent Certifier as to how the terms of the new contract are deemed to have been amended pursuant to clause 4.3(b)(iii), then upon either party serving a written notice to this effect upon the other, the dispute will be determined by an expert as if clauses 53.4 - 53.8 of the Project Contract were incorporated in this deed but as if:

- (h) references in those clauses to "PPP Co" were references to "the Independent Certifier";
- (i) references to "the parties" were references to "RailCorp and the Independent Certifier";
- (j) references to a "party" were references to "RailCorp" or "the Independent Certifier" (as appropriate);
- (k) references in those clauses to "Dispute" were references to this dispute; and
- (l) the dispute had been appropriately referred to expert determination.

4.3A Independent Verifier Deed

If RailCorp gives an Assumption Notice then as from the date of the Assumption Notice:

- (a) subject to clause 4.5, each Independent Verifier Deed will be terminated;
- (b) new independent verifier deeds will be deemed to have been entered into on the same terms as the Independent Verifier Deeds except that:
 - (i) PPP Co will not be a party to each new independent verifier deed but otherwise the parties to each deed remain the same; and
 - (ii) RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will be named as a party to each new independent verifier deed in substitution for PPP Co;
- (c) each new independent verifier deed will thereafter be known as an Independent Verifier Deed;
- (d) the relevant Independent Verifier must perform for RailCorp (or, subject to clause 4.2(b), the Approved Nominee) all of the obligations of the Independent Verifier to PPP Co under the relevant Independent Verifier Deed;
- (e) RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will assume all the rights and undertake all the obligations of PPP Co under each new Independent Verifier Deed;

- (f) subject to clause 4.5, the relevant Independent Verifier will have the same rights against RailCorp (or, subject to clause 4.2(b), the Approved Nominee) as it would have had against PPP Co under the relevant Independent Verifier Deed; and
- (g) for the avoidance of doubt, PPP Co will not have any liability arising in connection with each new Independent Verifier Deed.

4.4 Rolling Stock Manufacture Guarantees

If RailCorp gives an Assumption Notice then, subject to clause 4.5, as from the date of the Assumption Notice:

- (a) new deeds of guarantee will be deemed to have been entered into on the same terms as the Rolling Stock Manufacture Guarantees except that:
 - (i) PPP Co will not be a party to the new deeds of guarantee;
 - (ii) RailCorp (or, subject to clause 4.2(b), the Approved Nominee) will be named as beneficiary to the new deeds of guarantee in substitution for PPP Co; and
 - (iii) the terms of the new deeds of guarantee will be in the form of the Rolling Stock Manufacture Guarantees;
- (b) the new deeds of guarantee will thereafter be known as the Rolling Stock Manufacture Guarantees; and
- (c) each Rolling Stock Manufacturer Guarantor will guarantee for the benefit of RailCorp (or, subject to clause 4.2(b), the Approved Nominee) all of the obligations of the relevant Rolling Stock Manufacturer in accordance with the Rolling Stock Manufacture Guarantee.

If the new deeds of guarantee are in favour of the Approved Nominee, then the Rolling Stock Manufacturer Guarantors must enter into a side deed between RailCorp, the Rolling Stock Manufacturer Guarantors and the Approved Nominee on substantially the same terms as this deed.

4.5 Obligations prior to Assumption Notice

- (a) Clauses 4.2, 4.3, 4.3A and 4.4 will not operate to require RailCorp (or, if applicable, the Approved Nominee) to assume any obligations or liabilities of PPP Co under the Rolling Stock Manufacture Contract, the Rolling Stock Manufacture Guarantees, the Independent Certifier Deed or any Independent Verifier Deed which relate to or arise from the period prior to the date of the Assumption Notice.
- (b) RailCorp (or, if applicable, the Approved Nominee) will not be subject to any set-off or counterclaim by the Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors, the Independent Certifier or any Independent Verifier which arises out of circumstances which relate to the period prior to the date of the Assumption Notice.
- (c) Nothing in this deed will affect the rights and obligations of:
 - (i) PPP Co and the Rolling Stock Manufacturer under the Rolling Stock Manufacture Contract;
 - (ii) PPP Co, the Rolling Stock Manufacturer and the Independent Certifier under the Independent Certifier Deed;

- (iii) PPP Co, the Rolling Stock Manufacturer and the relevant Independent Verifier under the Independent Verifier Deeds; or
- (iv) PPP Co, the Rolling Stock Manufacturer and the Rolling Stock Manufacturer Guarantors under the Rolling Stock Manufacture Guarantees,

which accrued prior to the date of the Assumption Notice.

5. Amendments to Rolling Stock Manufacture Contract, Rolling Stock Manufacture Guarantees and Independent Certifier Deed

The Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors and the Independent Certifier agree with RailCorp that they will not agree to or permit any modification, variation, waiver or amendment to the terms of the Rolling Stock Manufacture Contract, the Rolling Stock Manufacture Guarantees or the Independent Certifier Deed without the prior consent of RailCorp.

6. Restriction on dealings

The Rolling Stock Manufacturer agrees with RailCorp that it will not after Financial Close transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the Rolling Stock Manufacture Contract without the prior consent of RailCorp (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgage, chargee or other encumbrancee enters into a deed in which it agrees to be bound by the terms of this deed.

7. Rolling Stock Manufacturer's warranty

The Rolling Stock Manufacturer represents and warrants for the benefit of RailCorp that it has not had any criminal, civil or other proceedings brought against it in connection with any rail safety incident (whether in Australia or elsewhere) and that no such proceedings are current, pending or, to its knowledge, threatened.

8. Acknowledgement by PPP Co

PPP Co consents to the terms of this deed and will co-operate in the implementation of this deed.

9. GST

- (a) Except where the context suggests otherwise, terms used in this clause 9 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (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 9.
- (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 9.
- (d) Any payment or reimbursement required to be made under this deed 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.

- (e) If GST is payable in relation to a supply made under or in connection with this deed then:
 - (i) 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; and
 - (ii) the additional amount is payable in the same manner and at the same time as the consideration or any part of the consideration is provided or to be provided for that supply and the Supplier will provide a tax invoice or tax invoices to the Recipient in respect of that supply, no later than the time or times at which the additional amount in respect of that supply is to be provided.
- (f) Where additional amounts are payable during the same month between parties to this deed pursuant to clause 9(e), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid.
- (g) If, for any reason (including the occurrence of an adjustment event), the amount of GST payable on a supply (taking into account any increasing or decreasing adjustments relevant to the supply) varies from the additional amount provided by the Recipient pursuant to clause 9(e), and the Supplier is required to pay a further amount of GST in respect of that supply or the Supplier receives a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply:
 - (i) the Supplier must provide a refund or credit to the Recipient or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST law;
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable; and
 - (iv) if there is an adjustment event in relation to the supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an adjustment note within 14 days after becoming aware of the occurrence of the adjustment event,

then the Supplier will be entitled to receive the amount of that variation from the Recipient or the Supplier will provide a corresponding refund or credit to the Recipient, as appropriate. For the purposes of calculating variations, any additional amount referred to in this clause 9 is taken to be amended by the amount of any earlier variation made under this clause 9.

10. Notices

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

- (a) must be in writing;

- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

RailCorp

Name: Rail Corporation New South Wales
Address: Level 6
18 Lee Street
Chippendale NSW 2008
Australia
Fax: 61 2 9379 4378
For the attention of: RailCorp's Representative (Rolling Stock PPP)

PPP Co

Name: Reliance Rail Pty Limited
Address: Level 6
ABN AMRO Tower
88 Phillip Street
Sydney NSW 2000
Australia
Fax: 61 2 9087 4000
For the attention of: PPP Co's Representative

EDI Rail

Name: EDI Rail Pty Limited
Address: 2B Factory Street
Granville NSW 2142
Australia
Fax: 61 2 9637 6783
For the attention of: Project Manager Rolling Stock PPP

Hitachi Australia

Name: Hitachi Australia Pty Limited
Address: Level 3
82 Waterloo Road
North Ryde NSW 2113
Australia
Fax: 61 2 9888 4188
For the attention of: General Manager, Power and Industrial Equipment Group

Downer EDI Limited

Address: Level 3
190 George Street
Sydney NSW 2000
Australia
Fax: 61 2 9251 4845
For the attention of: Company Secretary

Hitachi Limited

Address: 18-13, Soto-Kanda
1-Chome
Chiyoda-Ku
Tokyo
101-8608
Japan
Fax: 81 3 4564 6252
For the attention of: General Manager of Overseas Marketing Department,
Transportation System Sales Division

GHD Pty Limited

Address: 10 Bond Street
Sydney NSW 2000
Australia
Fax: 61 2 9239 7194
For the attention of: Peter Wilkinson

- (c) must be signed by the party making it (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 10(b); and
- (e) is taken to be received by the addressee:
 - (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.

11. Governing law and jurisdiction

11.1 Governing law

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

11.2 Jurisdiction

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 deed; 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 11.2(a).

12. Miscellaneous

12.1 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

12.2 Further acts and documents

Each party must 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.

12.3 Power of attorney

The Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors and the Independent Certifier each irrevocably appoint, with effect from the date RailCorp gives an Assumption Notice, RailCorp and such persons as are from time to time nominated by RailCorp, jointly and severally, as its attorney with full power and authority to execute and deliver any document contemplated by clauses 4.2, 4.3, 4.3A and 4.4 if the Rolling Stock Manufacturer, the Rolling Stock Manufacturer Guarantors or the Independent Certifier fail to execute such document within 5 Business Days of being requested in writing to do so by RailCorp.

12.4 Waiver

- (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 or consent 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.
- (c) No waiver of a breach of any 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.

12.5 Consents

A consent required under this deed from RailCorp may be given or withheld, or may be given subject to any conditions, as RailCorp (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

12.6 Amendments

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

12.7 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

12.8 Severance

If at any time any provision of this deed 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 deed; or
- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

12.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

12.10 Counterparts

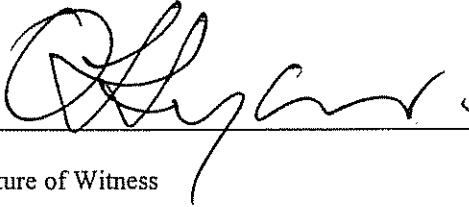
This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

12.11 Disputes

Except where the dispute resolution process is otherwise specified elsewhere in this deed for a particular dispute or where there is a like dispute under the Rolling Stock Manufacture Contract, any other dispute between two or more parties to this deed arising out of or in connection with this deed will be resolved as if clause 53 of the Project Contract has been incorporated in this deed with the necessary consequential amendments to allow for the determination of disputes between the parties under this deed in dispute and consequential amendments of the nature contemplated in clauses 4.2(a)(xi), 4.3(k) and 4.3A(k).

Executed as a deed.

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



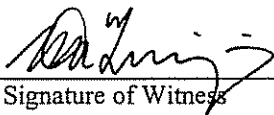
Signature of Witness

Owen John Hayford

Name of Witness 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

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

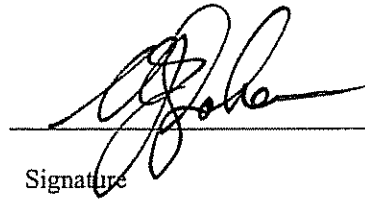
Marina Linda Tinning

Name of Witness in full

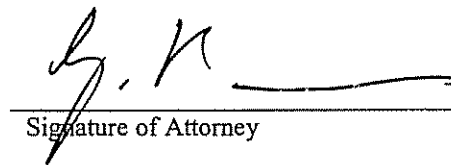
Executed by **EDI Rail Pty Limited** in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full



Signature



Signature of Attorney

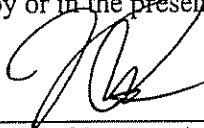
Greg C. Pauline

Name of Attorney in full

Signature of Director or Sole Director and Secretary

Name of Director or Sole Director and Secretary in full

Executed by Hitachi Australia Pty Limited in accordance with section 127 of the *Corporations Act* by or in the presence of:



Signature of Secretary/other Director

Tadanobu Munemura

Name of Secretary/other Director in full

Executed by Downer EDI Limited in accordance with section 127 of the *Corporations Act* by or in the presence of:



Signature of Secretary/other Director

PETER EDWARDS JOHN JOWIE

Name of Secretary/other Director in full


Signed sealed and delivered for and on behalf of **Hitachi Ltd** by:

its Attorney under a Power of Attorney dated

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

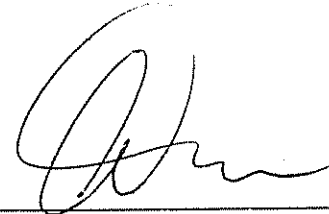
Name of Witness in full



Signature of Director or Sole Director and Secretary

YUTAKA SUGIHARA

Name of Director or Sole Director and Secretary in full



Signature of Director or Sole Director and Secretary

Carol Thompson

Name of Director or Sole Director and Secretary in full

Signature of Attorney

Name of Attorney in full

Executed by Hitachi Australia Pty Limited in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

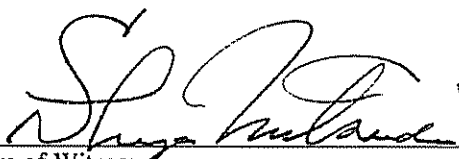
Name of Secretary/other Director in full

Executed by Downer EDI Limited 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

Executed by Hitachi, Ltd. in the presence of:



Signature of Witness

SHINYA MITSUDOMI


Name of Witness in full

Signature of Director or Sole Director and Secretary

Name of Director or Sole Director and Secretary in full

Signature of Director or Sole Director and Secretary

Name of Director or Sole Director and Secretary in full



Signature of Vice President & Executive Officer

Gaku Suzuki

Name of Vice President & Executive Officer

Signed sealed and delivered for and on behalf
of GHD Pty Limited by

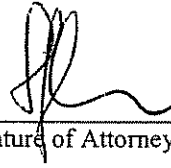
its Attorney under a Power of Attorney dated
29 November 2006
and the Attorney declares that the Attorney has not
received any notice of the revocation of such Power
of Attorney, in the presence of:



Signature of Witness

PETER MICHAEL WILKINSON.

Name of Witness in full



Signature of Attorney

STEPHEN JOHN BURNS

Name of Attorney in full

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:

R.G. White

Signature of Witness

ROBERT WHITE

Name of Witness in full

Stephen A. Hobbs

Signature of Attorney

Stephen A. Hobbs

Name of Attorney in full