

**Rail Corporation New South Wales**  
ABN: 59 325 778 353  
**Rolling Stock PPP:** PO Box K349 Haymarket NSW 1238  
Level 22, 323 Castlereagh Street, Sydney 2000  
Ph: (02) 9379 4334 Fax: (02) 9379 6500  
www.railcorp.info

RailCorp Ref: RC08847  
File No: PMO1590

3 February 2012

Reliance Rail Pty Limited  
Suite 2, Level 9  
333 George Street  
SYDNEY NSW 2000

Attention: Mr Ian Hunt

Dear Ian,

**PROJECT CONTRACT NO. C01645**  
**RAILCORP ROLLING STOCK PPP CONTRACT**  
(the "Project Contract")

**SUBJECT: WAIVER OF PRECONDITIONS TO PC OF SET 7**

Terms which are capitalised but not defined in this letter have the meanings given to them in the Project Contract.

**Initial Reliability Requirement**

RailCorp is prepared to waive the precondition to Practical Completion of Set 7 set out in clause 19.1 of the Project Contract, that the Initial Reliability Requirement described in clause 19.2 of the Project Contract be satisfied, subject to the following conditions:

- a. Subject to the further waivers set out below, Set 7 must meet all other contractual requirements, including the provision of such documents in satisfactory form necessary to support RailCorp's Accreditation Variation to ITSr;
- b. In respect of Sets 8 to 17, prior to presentation for Practical Completion and as a precondition to Practical Completion, each of Sets 8 to 17 will have accumulated at least 6,500 kilometres in the same configuration as it is presented for Practical Completion, with a continuous block of at least 1,500 of these kilometres being free of any faults of a technical nature which, if the Set was in service or due to enter service, would result in a cancellation or withdrawal of the Set from service. RailCorp must provide Train Paths and crews in accordance with the Project Contract;
- c. In consideration of the PPP Co initiated Variation in paragraph (b), RailCorp will pay Variation Costs of \$3,000,000 to PPP Co in ten equal instalments of \$300,000. Each instalment must be paid by RailCorp within 5 Business Days of the Date of Practical Completion of each of Sets 8 to 17. PPP Co will pass through the full amount to the Rolling Stock Manufacturer in accordance with Schedule 8 of the Common Terms Deed;
- d. PPP Co acknowledges that it is not entitled to make any Claim against RailCorp arising out of:
  - any delay; or

- any effect on the matters referred to in clause 31.2(f) of the Project Contract,  
  
in either case caused solely by the Variation in paragraph (b). This does not prevent PPP Co from making any other Claim under the Project Contract (as amended).
- e. PPP Co also acknowledges that it is not entitled to and will not be entitled to make any claim under clause 15.11 of the Project Contract.
- f. Any late payment of amounts properly due and payable under this letter will incur simple interest at the Default Rate from the day after the date for payment to (and including) the date of payment;
- g. PPP Co must submit a plan for the reform of the TLS processes and management by 7 February 2012 such that this plan will ensure the availability and reliability requirements of the Project Contract are met. It will be a precondition to each payment under paragraph (c) that PPP Co is complying with this plan. If a material non-compliance is identified, any payment claimed may only be delayed until the non-compliance is addressed.

Within 10 Business Days of achieving Practical Completion of Set 17, RailCorp will procure that the Director General of Transport for NSW completes a review of the reliability and performance of Sets 1 to 17 (the Director General of Transport for NSW may commence this review following the achievement of Practical Completion of Set 13). As part of this review, the Director General will facilitate a process to review and establish an appropriate and relevant interpretation of a PPP Co Related Incident.

If the Director General is satisfied having regard to the original provisions of the Project Contract and the nature of the incidents, the Director General shall notify the parties in writing and train deliveries will continue in accordance with the Project Contract. If the Director General is not satisfied, the Director General shall notify the parties in writing and train deliveries will continue upon agreement between the parties of a corrective action plan.

The Director General will facilitate a process to consider opportunities and agree improvements to the Delivery Programme.

#### **Deemed Action Times**

RailCorp unconditionally waives the requirement in clause 18.1(e)(ii) of the Project Contract.

#### **Treat as if Minor Defects**

RailCorp is prepared to waive the condition, agreed in RC07549, to correct, pass or satisfy the following items which were treated as if a Minor Defect (**TAIMDs**) as a precondition to Practical Completion of Set 7, on the condition that the relevant TAIMD is corrected, passed or satisfied (as applicable) before, and as a precondition to, Practical Completion of Set 11 (or such later Set as RailCorp may determine):

- MD-0164
- MD-0626
- MD-0635
- MD-0737
- MD-0780
- MD-0821

All other conditions which apply to the above TAIMDs, as set out in RC07549, continue to apply.

#### **General**

The waivers and variation referred to in this letter will not alter the operation of any other provisions in the Project Contract including, without limitation, clauses 19.4 (Precondition to Final Completion of Sets),

19.5 (Initial Reliability Requirement for Sets) or 49.2 (Unacceptable Reliability Notice), or clause 4.6.7 (Physical Configuration Audit) of the CMR.

Would you please:

- confirm PPP Co's agreement to the conditions and terms referred to in this letter;
- confirm that PPP Co has obtained any consents which are required under the Debt Financing Documents as a consequence of this letter

by countersigning this letter where indicated below.

This waiver will not take effect unless and until:

- PPP Co provides these confirmations; and
- the Set 7 Waiver Effective Time has occurred.

For the purposes of this letter, **Set 7 Waiver Effective Time** has the meaning given in the Restructure Co-ordination Deed dated on or about the date of this letter between, amongst others, RailCorp, PPP Co, FGIC UK Limited and Syncora Guarantee Inc.

Yours sincerely,

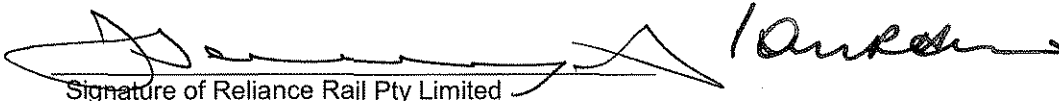


**Frederick George Paton**  
**RailCorp's Representative**  
**Rolling Stock PPP**

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By countersigning this letter, PPP Co confirms:

- its agreement to the conditions and terms referred to in this letter; and
- that it has obtained any consents which are required under the Debt Financing Documents as a consequence of this letter.



Signature of Reliance Rail Pty Limited  
Representative

3 February 2012  
Date