



EDIR# 12298

3 February 2012

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

Attention: Mr Ian Hunt

Rail Corporation New South Wales
Level 22, 323 Castlereagh Street
SYDNEY NSW 2000

Attention: Mr Frederick Paton

Dear Ian and Fred

Re: Rolling Stock PPP – Through Life Support (TLS Contract)
Subject: Acknowledgement re Waivers of IRR as a precondition to PC of Set 7

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

I refer to the attached draft letters from RailCorp to PPP Co and from PPP Co to the Rolling Stock Manufacturer in relation to proposed waivers to the Initial Reliability Requirement for Practical Completion of Set 7 and related variations to the Project Contract and the RSM Contract respectively (the **Waiver letters**).

By this letter, the TLS Contractor:

- 1.1 acknowledges the Waiver letters and the arrangements contained in them;
- 1.2 confirms the Waiver letters and the arrangements contained in them do not affect or qualify the obligations of the TLS Contractor under the TLS Contract; and
- 1.3 confirms, as at the date the TLS Contractor signs this letter, it does not have any claims arising out of the Waiver letters or the arrangements contained in them.

Yours sincerely

Ross Spicer
TLS Contractor's Representative
EDI Rail PPP Maintenance Pty Limited

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
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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

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

Date

Ref: FC:RR#14600 IRH

Friday, 3 February 2012

Project Manager Rolling Stock PPP
Downer EDI~Rail Hitachi JV
2B Factory Street
Granville NSW 2142

Attention: Mr Ross Spicer

Dear Ross

Re: Rolling Stock PPP – Rolling Stock Manufacture Contract (the “RSM Contract”)
Subject: Waiver of IRR as a precondition to PC of Set 7

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

Initial Reliability Requirement

PPP Co is prepared to waive the precondition to Practical Completion of Set 7 set out in clause 19.1 of the RSM Contract, that the Initial Reliability Requirement described in clause 19.2 of the RSM 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. PPP Co must procure that RailCorp provides Train Paths and crews in accordance with the Project Contract;
- (c) In consideration of the Variation in sub-paragraph (b), PPP Co will pay Variation Costs of \$3,000,000 to the Rolling Stock Manufacturer in ten equal instalments of \$300,000. Within 1 Business Day of the receipt of each corresponding payment from RailCorp, PPP Co will notify the Rolling Stock Manufacturer of such payment and the amount of interest which is payable by RailCorp in relation to such instalment. Each instalment must be paid by PPP Co to the Rolling Stock Manufacturer as follows:
 - (i) subject to sub-paragraph (c)(ii), PPP Co will pass through, in accordance with Schedule 8 of the Common Terms Deed, the full amount of each instalment (and all interest applicable to such instalment due from RailCorp) to the Rolling Stock Manufacturer within the later of:
 - (A) 5 Business Days of receiving a Payment Certificate by the Independent Certifier under clause 27.4A of the RSM Contract in respect of the relevant instalment; and
 - (B) the last Business Day of the month in which the payment claim to which the Payment Certificate referred to in sub-paragraph (c)(i)(A) is received;

- (ii) the Rolling Stock Manufacturer must claim the payment of each such instalment in accordance with clause 27.4 of the RSM Contract, but may only do so following receipt of the corresponding instalment by PPP Co from RailCorp;
 - (iii) 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;
 - (iv) any interest incurred by PPP Co under sub-paragraph (c)(iii) in respect of an instalment must be paid by PPP Co to the Rolling Stock Manufacture together with the payment of the following instalment due to be paid under this letter. In the event that any interest is incurred on the final instalment to be paid under this letter the Rolling Stock Manufacturer is entitled to claim payment for such interest with a claim for payment submitted by the Rolling Stock Manufacturer in accordance with clause 27.4 of the RSM Contract; and
 - (v) PPP Co will provide all information and assistance which the Rolling Stock Manufacturer, or the Independent Certifier reasonably requests in connection with the inclusion of the payments referred to in this letter in a claim for payment under clause 27.4 of the RSM Contract and will provide any assistance which the RSM reasonably requests to ensure that the payments referred to in sub-paragraphs (c)(i) and (c)(iv) are included in the relevant Payment Certificate issued by the Independent Certifier under clause 27.4A of the RSM Contract.
- (d) The Rolling Stock Manufacturer acknowledges that it is not entitled to make any Claim against PPP Co arising out of:
- (i) any delay; or
 - (ii) any effect on the matters referred to in clause 31.2(f) of the RSM Contract,
- in either case caused solely by the Variation in sub-paragraph (b). This does not prevent the Rolling Stock Manufacturer from making any other Claim under the RSM Contract (as amended).
- (e) The Rolling Stock Manufacturer also acknowledges that it is not entitled to and will not be entitled to make any claim under clause 15.9 of the RSM Contract in respect of the cause referred to in clause 15.9(c)(x) of the RSM Contract.
 - (f) The TLS Contractor must submit to PPP Co 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 sub-paragraph (c) that the TLS Contractor 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, PPP Co 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 the review, the Director General and PPP Co 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 PPP Co, and PPP Co will in turn notify the Rolling Stock Manufacturer in writing, and train deliveries will continue in accordance with the RSM Contract. If the Director General is not satisfied, the Director General shall notify PPP Co, and PPP Co

shall in turn notify the Rolling Stock Manufacturer in writing, and train deliveries will continue upon agreement between PPP Co and RailCorp of a corrective action plan.

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

Deemed Action Times

PPP Co unconditionally waives the requirement in clause 18.1(e)(ii) of the RSM Contract.

Treat as if Minor Defects

PPP Co is prepared to waive the condition, agreed in RR#12465, 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 RR#12465, continue to apply.

General

The waivers and variation referred to in this letter will not alter the operation of any other provisions in the RSM 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 Contract Management Requirements.

Would you please:

- confirm the Rolling Stock Manufacturer's agreement to the conditions and terms referred to in this letter; and
- confirm that the Rolling Stock Manufacturer has obtained any consents which are required under the Rolling Stock Manufacture Contract Side Deed as a consequence of this letter,

by countersigning this letter where indicated below.

This waiver will not take effect unless and until:

- the Rolling Stock Manufacturer 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,

Ian Hunt
PPP Co's Representative
For and on behalf of Reliance Rail Pty Limited
as trustee of the Reliance Rail Trust

By countersigning this letter, the Rolling Stock Manufacturer confirms its agreement to the conditions and terms referred to in this letter.

Signature of Rolling Stock Manufacturer's
Representative
