



RailCorp

TLS 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 PPP Maintenance Pty Limited
ABN 97 122 730 116

TLS Contractor

Downer EDI Limited
ABN 97 003 872 848

TLS Guarantor

GHD Pty Limited
ABN 39 008 488 373

Independent Certifier

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Table of Contents

1.	Definitions and interpretation	1
1.1	Project Contract definitions	1
1.2	Definitions	1
1.3	Interpretation	2
1.4	Replacement body interpretation	3
1.5	No bias against drafting party	3
1.6	Business Day	3
1.7	Inconsistencies	3
1.8	Project Contract and Debt Finance Side Deed	3
1.9	Capacity	4
2.	Securities	4
2.1	TLS Contractor acknowledgements and consents	4
2.2	TLS Guarantor acknowledgements and consents	4
3.	RailCorp's right to cure Default Event	5
3.1	RailCorp's cure rights	5
3.2	Restriction on right to terminate or suspend	5
3.3	Statements concerning Default Event	6
3.4	Warranty of accuracy	7
3.5	Disputes as to statements	7
3.6	Verification	7
3.7	No liability	7
3.8	PPP Co to compensate RailCorp	7
3.9	No limitation on other rights	7
4.	RailCorp's right to assume PPP Co's rights and obligations under TLS Contract, TLS Guarantee and Independent Certifier Deed	8
4.1	Option	8
4.2	TLS Contract	8
4.3	Independent Certifier Deed	10
4.4	TLS Guarantee	11
4.5	Obligations prior to Assumption Notice	12
5.	Amendments to TLS Contract, TLS Guarantee and Independent Certifier Deed	12
6.	Restriction on dealings	12
7.	TLS Contractor's warranty	12
8.	Acknowledgement by PPP Co	12
9.	GST	13
10.	Notices	14
11.	Governing law and jurisdiction	15
11.1	Governing law	15
11.2	Jurisdiction	16
12.	Miscellaneous	16
12.1	Entire agreement	16

12.2	Further acts and documents	16
12.3	Power of attorney	16
12.4	Waiver.....	16
12.5	Consents.....	16
12.6	Amendments	17
12.7	Expenses	17
12.8	Severance.....	17
12.9	No representation or reliance	17
12.10	Counterparts	17
12.11	Disputes	17

TLS Contract Side Deed made at Sydney on 3rd 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 PPP Maintenance Pty Limited ABN 97 122 730 116** of 2B Factory Street, Granville, New South Wales ("**TLS Contractor**")
- Downer EDI Limited ABN 97 003 872 848** of Level 3, 190 George Street, Sydney, New South Wales ("**TLS Guarantor**")
- GHD Pty Limited ABN 97 008 488 373** of 10 Bond Street, Sydney, New South Wales ("**Independent Certifier**")

Background

- A. Under the Project Contract, PPP Co is required to, amongst other things, provide Through Life Support for the Cars, the Simulators and the Maintenance Facility.
- B. PPP Co has subcontracted its obligations to provide Through Life Support for the Cars, the Simulators and the Maintenance Facility to the TLS Contractor pursuant to the TLS Contract.
- C. The TLS Guarantor has, pursuant to the TLS Guarantee, guaranteed to PPP Co the performance of the TLS Contractor's obligations under the TLS Contract.
- D. The Independent Certifier has, pursuant to the Independent Certifier Deed, agreed to provide certain services to PPP Co, the TLS Contractor, the Rolling Stock Manufacturer and PPP Co's financiers in connection with the TLS Contract.
- E. The TLS Contractor, the TLS Guarantor and the Independent Certifier have agreed to grant RailCorp certain rights in relation to the TLS Contract, the TLS Guarantee and the Independent Certifier Deed.

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 TLS Contractor (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 TLS 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 TLS Contract.

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

"Collateral Warranty Deed" means each collateral warranty deed required to be provided in accordance with clause 5D of the TLS Contract.

"Default Event" means:

- (a) any default (howsoever described) by PPP Co under the TLS 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 TLS Contractor to terminate, rescind, accept the repudiation of, or suspend any or all of the TLS Contractor's obligations under, the TLS Contract.

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

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

"Fixed and Floating Charge" means the document referred to in clause 5E of the TLS Contract.

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

"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).

"Retention Bond" means a bond provided under clause 27B.1(e) of the TLS Contract.

"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.

"TLS Contract" means the contract so entitled dated on or about the date of this deed between PPP Co and the TLS Contractor relating to the Through Life Support of the Cars, the Simulators and the Maintenance Facility and, if RailCorp gives an Assumption Notice, any new contract entered into pursuant to clause 4.2(a).

"TLS Guarantee" means the deed of guarantee dated on or about the date of this deed from the TLS Guarantor in favour of PPP Co in respect of the obligations of the TLS Contractor to PPP Co under the TLS Contract and, if RailCorp gives an Assumption Notice, any new guarantee entered into pursuant to clause 4.4.

"TLS Phase Bond" means the bond referred to in clause 5.1(ab) of the TLS Contract.

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 TLS Contract, this deed will prevail over the TLS Contract.

1.8 Project Contract and Debt Finance Side Deed

Each of the TLS Contractor, the TLS Guarantor 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 TLS Contractor acknowledgements and consents

The TLS Contractor:

- (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 TLS Contract and the TLS Guarantee 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 TLS 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 TLS 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 TLS Guarantor acknowledgements and consents

The TLS 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 TLS Guarantee 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 TLS Guarantee 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 TLS Guarantee 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 TLS Guarantor to revoke or terminate the TLS Guarantee.

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 TLS Contractor 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 TLS 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 TLS Contractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the TLS Contract unless each of the following conditions has been satisfied:

- (a) the TLS Contractor 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 TLS Contract, together with the statements referred to in clause 3.3;
- (b) if the TLS Contractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the TLS 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 TLS Contractor has given notice to RailCorp ("**RailCorp Cure Notice**") confirming that, either:
 - (i) the requirements of clause 3.2(b) are satisfied; or
 - (ii) the TLS Contractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the

TLS 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 TLS Contract or agreed to by the TLS Contractor), that Default Event has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the TLS Contract or agreed to by the TLS Contractor) 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 TLS Contract or agreed to by the TLS Contractor) 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 TLS Contract within 20 Business Days (or such longer period as is permitted under the TLS Contract or agreed to by the TLS Contractor) after the date on which RailCorp Cure Notice is given to RailCorp; or
 - (v) RailCorp notifies the TLS Contractor 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 TLS Contractor must submit to RailCorp statements of:

- (a) where the Default Event is a monetary default, the amount which must be paid to the TLS Contractor to remedy the Default Event;
- (b) where the Default Event is of a non-monetary nature:
 - (i) the provisions of the TLS 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 TLS Contractor 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 TLS Contractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the TLS Contract.

3.4 Warranty of accuracy

The TLS Contractor 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 TLS Contractor 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 TLS Contractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of PPP Co) statements submitted by the TLS Contractor, and the TLS Contractor must (subject to such firm(s) executing an appropriate confidentiality agreement as the TLS Contractor 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 TLS Contractor acknowledge that, without limiting the liability of PPP Co (which continues to be responsible for the performance of its obligations under the TLS 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 TLS Contract by reason only of RailCorp performing PPP Co's obligations in accordance with the TLS Contract. PPP Co and the TLS Contractor 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 TLS Contract, TLS Guarantee and Independent Certifier Deed

4.1 Option

If RailCorp terminates the Project Contract then RailCorp may exercise its rights under this clause 4 by giving a notice ("**Assumption Notice**") to the TLS Contractor, the TLS Guarantor and the Independent Certifier.

4.2 TLS 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 TLS Contract will be terminated;
 - (ii) a new contract will be deemed to have been entered into, on the same terms as the TLS 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 TLS 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 TLS 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 original TLS Contract had the Project Contract not been terminated; and
 - 2) the rights and obligations which the TLS Contractor will assume under the new contract will be equivalent to those which the TLS Contractor would have had under the original TLS Contract had the Project Contract not been terminated;
 - 3) any provisions of the Project Contract incorporated by reference into the TLS Contract are incorporated in the new contract; and
 - 4) without affecting the generality of this clause 4.2(a)(ii)C, clauses 53.14 and 54.6 of the TLS Contract will be deemed to be deleted;
 - (iii) the new contract will thereafter be known as the TLS Contract;

- (iv) the TLS Contractor must perform for RailCorp (or, subject to clause 4.2(b), the Approved Nominee) all of the obligations of the TLS Contractor to PPP Co under the new TLS 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 TLS Contract;
- (vi) subject to clause 4.5, the TLS Contractor 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 TLS Contract; and
- (vii) for the avoidance of doubt, PPP Co will not have any liability arising in connection with the new TLS Contract.

If after the date of the Assumption Notice given under this clause 4.2, there is a dispute between RailCorp and the TLS Contractor as to how the terms to 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 reference to "the TLS Contractor";
- (ix) references to "the parties" were references to "RailCorp and the TLS Contractor";
- (x) references to a "party" were references to "RailCorp" or "the TLS Contractor" (as appropriate);
- (xi) references to those clauses to "Dispute" were references to this dispute; and
- (xii) the dispute had been referred to expert determination appropriately.

(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 TLS Contractor 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 TLS Contractor to decide whether the nominated person is an Approved Nominee;
- (ii) the TLS Contractor must not unreasonably withhold or delay its decision on whether the nominated person is an Approved Nominee;
- (iii) the TLS Contractor 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 TLS 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 TLS Contractor 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 TLS Phase Bond (as defined in the TLS Contract) held by PPP Co under the TLS 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 TLS Contract.

(d) **(Other documents under the TLS 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 arising out of acts or omissions which occurred prior to the date of the Assumption Notice); and

(ii) each Expert Determination Agreement applicable to the TLS 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; and

(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;

- (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.

4.4 TLS Guarantee

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

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

If the new deed of guarantee is in favour of the Approved Nominee, then the TLS Guarantor must enter into a side deed between RailCorp, the TLS Guarantor 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 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 TLS Contract, the TLS Guarantee or the Independent Certifier 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 TLS Contractor, the TLS Guarantor or the Independent Certifier 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 TLS Contractor under the TLS Contract;
 - (ii) PPP Co, the TLS Contractor and the Independent Certifier under the Independent Certifier Deed; or
 - (iii) PPP Co, the TLS Contractor and the TLS Guarantor under the TLS Guarantee,

which accrued prior to the date of the Assumption Notice.

5. Amendments to TLS Contract, TLS Guarantee and Independent Certifier Deed

The TLS Contractor, the TLS Guarantor 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 TLS Contract, the TLS Guarantee or the Independent Certifier Deed without the prior consent of RailCorp.

6. Restriction on dealings

The TLS Contractor agrees with RailCorp that it will not after Financial Close transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the TLS 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. TLS Contractor's warranty

The TLS Contractor 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

TLS Contractor:

Name: EDI Rail PPP Maintenance Pty Limited
Address: Level 3
190 George Street
Sydney NSW 2000
Australia
Fax: 61 2 9251 4845
For the attention of: Company Secretary

TLS Guarantor:

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

Independent Certifier:

Name: 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 TLS Contractor, TLS Guarantor and 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 and 4.4 if the TLS Contractor, TLS Guarantor or 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 TLS 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 had 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) and 4.3(k).

Executed as a deed.

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



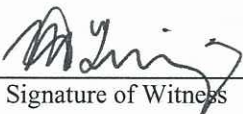
Signature of Witness

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

Greg Pauline
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:



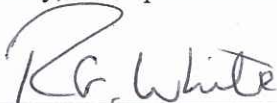
Signature of Witness

Marina Linda Tinning

Name of Witness in full

Signed sealed and delivered for and on behalf of **EDI Rail PPP Maintenance Pty Limited** 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

ROBERT WHITE

Name of Witness in full

Signature

Signature of Attorney

Name of Attorney in full

Signature of Attorney

Name of Attorney 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 JARIE

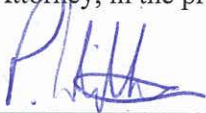
Name of Secretary/other Director in full

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

its Attorney under a Power of Attorney dated

29 November 2006

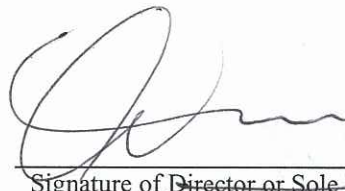
and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

Peter Michael Wilkinson


Name of Witness in full



Signature of ~~Director or Sole Director and~~ Secretary

CARL THOMPSON

Name of ~~Director or Sole Director and~~ Secretary in full



Signature of Attorney

STEPHEN J. BURNS

Name of Attorney in full