



**Transport
for NSW**

TANGARA TECHNOLOGY UPGRADE

**DEED OF VARIATION
FOR
SUPPLY AND SERVICES CONTRACT**

Between

Transport for NSW

(PRINCIPAL)

ABN 18 804 239 602

and

UGL Unipart Rail Services Pty Ltd

(CONTRACTOR)

ABN 49 154 895 940

CONTRACT NUMBER: IPD-19-8191

Level 5, Tower A
821 Pacific Highway
Chatswood NSW 2067

Deed of Variation

Dated: 20 DECEMBER 2019

Between:

1. **Transport for NSW** (ABN 18 804 239 602), a corporation established by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (**Principal**).
2. **UGL Unipart Rail Services Pty Ltd** (ABN 49 154 895 940) of Level 10, 40 Miller Street, North Sydney NSW 2060 (the **Contractor**),

(collectively, the Parties).

Recitals

- (a) On 28 June 2019, the Parties entered into a supply and services contract in respect of the Tangara Technology Upgrade project (the **Contract**).
- (b) The Parties agree to vary the Contract on the terms set out in this Deed.

IT IS AGREED as follows:

1. Definitions and Interpretation

Capitalised terms used in this Deed have the meanings given to them in the Contract, unless otherwise stated.

2. Variation of Contract

Effective as at the date of execution by the Parties of this Deed, the Contract is varied as follows:

- (a) The definition of "Conditions Precedent" in the Contract is amended as follows:

"**Conditions** ~~Precedent~~ Subsequent are the conditions ~~precedent~~ subsequent as set out in clause 1.7."

- (b) The definition of "Conditions Precedent Deadline" in the Contract is amended as follows:

"**Conditions** Subsequent ~~Precedent~~ **Deadline** means 30 June 2020 or such other date as agreed by the parties in writing."

- (c) The definition of "Commencement Date" is amended as follows:

"**Commencement Date** means 20 December 2019 ~~the date determined by clause 1.6(b).~~"

- (d) Clause 1.6(a) of the Contract is deleted and replaced with the following:

"(a) This Deed will commence on the Commencement Date."

- (e) Clause 1.6(b) of the Contract is deleted and replaced with:

"(b) Not used."

(f) Clauses 1.7, 1.8, 1.9 and 1.10 of the Contract are amended as set out in Schedule 1.

(g) Clause 1.11 of the Contract is amended as follows:

"If the Condition Subsequent Freedent set out in clause 1.7(b) has been satisfied,..."

(h) Clause 13.16 of the Contract is amended as follows:

"(b) subject to the Principal receiving the unconditional undertaking in clause 3.5(b)(ii), the Principal will pay a mobilisation payment of \$ [redacted] (the **Mobilisation Payment**), to the Contractor ~~within 10 calendar days of the date the Conditions Freedent have been satisfied or waived on the~~ Commencement Date;"

(i) ~~The table in~~ Section 2.2 of Schedule 2 (Payment Schedule) of the Contract is amended as follows:

"Promptly upon the Completion of Portion 2 under the Contract TPD-14-3914, the Contractor must reconcile the inventory held at that time (Existing Inventory) against the (final) EBOM and the Consist 1 Design and submit a report that includes the Existing Inventory plus any Inventory Delivered prior to the Contractor providing the report, without any doubling-up. (Existing Inventory Report) to the Principal's Representative that shows for each part number included in the payment claim:..."

Payment Milestone	Payment (excl. GST)
<u>Commencement Date</u>	<u>The Contractor will be entitled to an advance payment of \$ [redacted] (excluding GST). This amount nominally reflects the mark-up of [redacted] % on the inventory listed in Section 3.1 of this Schedule 2.</u>
The Contractor provides the Existing Inventory Report	For each part, the Contractor will be entitled to the Reimbursable Cost for the parts multiplied by the number of parts in the Existing Inventory Report plus a mark-up of [redacted] %.

For the avoidance of doubt, upon the Contractor providing the Existing Inventory Report, the Contractor will be entitled to claim for the Reimbursable Cost plus a mark-up of [redacted] % for all parts listed in the Inventory Report (including parts of which the Contractor has taken delivery between the date of this Deed and the date that the Inventory Report is submitted by the Contractor to the Principal).

Upon the Contractor being entitled to payment under this Section 2.2 of Schedule 2, the Principal will return to the Contractor the unconditional undertakings provided by the Contractor to secure the Advance Payment referred to in Section 2.1 of this Schedule 2, subject to the value of the unconditional undertakings being returned by the Principal being no greater than the Contractor's payment entitlement. Where the Contractor has provided more than one unconditional undertaking, the unconditional undertakings will be returned progressively."

3. Additional term

Despite anything else in the Contract or this Deed, the Contractor must, within two Business Days of the Commencement Date, Deliver to the Principal all Inventory in respect of Consist 2 that is in the Contractor's possession as at the Commencement Date and which the Principal requires to be Delivered immediately.

4. Effect of variation

- (a) The amendments to the Contract pursuant to this Deed do not affect the validity or enforceability of the relevant surviving aspects of the Contract.
- (b) Other than pursuant to:
 - (i) the amendments expressly made by this Deed; and
 - (ii) the terms of this Deed,

the Parties' respective rights, liabilities and obligations to each other under the relevant surviving aspects of the Contract are not released, reduced or diminished as a result of the amendments pursuant to this Deed.
- (c) On and with effect from the date of execution by the Parties of this Deed, any reference to the Contract is a reference to that document as amended pursuant to this Deed.
- (d) On and with effect from the date of execution by the Parties of this Deed, each Party is bound by the Contract as amended by this Deed.

5. Confidentiality

The Parties each agree that they will not disclose the terms of this Deed to any person whether directly or indirectly except:

- (a) to their legal and financial advisers;
- (b) as may be required (but only to the minimum extent reasonably necessary) by law;
- (c) as may be required to enforce or obtain the benefits of the terms of this Deed or the Contract; and
- (d) (in the case of the Principal) for any legitimate government purpose.

6. Warranties

The Parties each warrant to the other as essential conditions that:

- (a) they are voluntarily entering into this Deed without any duress;
- (b) other than as set out in this Deed, neither Party has made any promise, representation or inducement to the other to enter into this Deed;
- (c) they have each obtained and taken into account legal advice from their separate independent legal advisers, concerning the nature, effect and extent of this Deed; and
- (d) they are aware that the other Party is relying on these warranties in proceeding with this Deed.

7. General

7.1 Binding effect of this Deed

This Deed binds each Party and any transferee, assignee, administrator or liquidator appointed in respect of it.

7.2 Further assurance

Each Party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

7.3 Counterparts

This Deed may be executed in a number of counterparts, all of which taken together will be taken to constitute one and the same document.

7.4 Severability

If anything in the Contract as amended by this Deed is unenforceable, illegal or void then it is severed and the rest of the Contract as amended by this Deed remains in force.

7.5 Waiver

- (a) A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (c) A waiver is not effective unless it is in writing.
- (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

7.6 Variation

This Deed may only be amended, supplemented or replaced by another Deed signed by each of the Parties, whether in one or more counterparts.

7.7 Costs and outlays

Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Deed.

7.8 Governing law and jurisdiction

- (a) The laws of New South Wales govern this Deed.
- (b) Each Party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

7.9 Dispute Resolution

A Party claiming that a dispute has arisen out of or in connection with this Deed must comply with the provisions of clause 17 of the Contract in relation to that dispute.

7.10 Notices

A notice, approval, certificate, consent or other communication in connection with this Deed is to be given in accordance with the Contract.

7.11 Entire agreement

This Deed constitutes the entire agreement of the Parties relating to the subject matter of this Deed and supersedes all prior understandings, negotiations, agreements, written or oral, express or implied, in relation to that subject matter.

Signing page

Executed and delivered as a Deed in Sydney

Signed for and on behalf of
Transport for NSW (ABN 18
804 239 602)

Signature of Witness

STEPHEN KROON

Print Name of Witness (block letters)

Signature of Authorised Delegate

R. F. HUDSON

Print Name of Authorised Delegate (block letters)

PROJECT DIRECTOR

Position held

DEPUTY EXECUTIVE DIRECTOR ROLLING STOCK DELIVERY

Position held

Signed by UGL
Unipart Rail
Services Pty Ltd
(ABN 49 154 895
940) under s.127(1)
of the Corporations
Act 2001

sign

Director

office (director)

Steven Inghis.

full name

sign

Company Secretary

office (director or secretary)

Dean B. Ellis

full name

Schedule 1

1.7 Conditions ~~Precedent~~Subsequent

The Conditions ~~Precedent~~ Subsequent are:

- (a) the Principal has issued a:
 - (i) "Certificate of Completion" in respect of "Portion 1" (the Simulator Upgrade) (as those terms are defined in the Initial TTU Contract); and
 - (ii) "Certificate of Completion" in respect of "Portion 2" (Consist 1) (as those terms are defined in the Initial TTU Contract),under the Initial TTU Contract;
- (b) the Contractor has provided to the Principal, in accordance with clause 9.14 of the Initial TTU Contract the relevant Design Documentation including an engineering bill of materials and as-installed drawings in respect of "Portion 2" (as those terms are defined in the Initial TTU Contract), the Principal has notified the Contractor in writing that the Principal has not rejected that Design Documentation (including the engineering bill of materials and as-installed drawings);
- (c) execution by both parties of the Deed of Settlement and Variation;
- (d) the Contractor has provided to the Principal all unconditional undertakings as required under this Deed;
- (e) the Contractor has provided to the Principal:
 - (i) executed warranty deed polls from all Subcontractors in the form of Schedule 17; and
 - (ii) executed forms of all deeds included in the Schedules, and to the extent these already provided under the Initial TTU Contract, written confirmation by the relevant parties, by deed, that those deeds are extended to cover the Services and Equipment supplied under this Deed; and
- (f) the Contractor has provided to the Principal escrow deeds on terms reasonably satisfactory to the Principal (and terms generally consistent with and no more onerous on the Subcontractor than the terms set out in the sample escrow deed in the form of Schedule 18 of the Initial TTU Contract, executed by the Subcontractors listed in Schedule 1.

1.8 Satisfaction of Conditions ~~Precedent~~Subsequent

- (a) The Contractor must satisfy ~~each the~~ Conditions ~~Subsequent Precedent in~~ clauses 1.7(b) and 1.7(f) (or procure ~~as their~~ waiver in accordance with clause 1.9) by the Conditions ~~Subsequent Precedent~~ Deadline ~~and must notify the Principal as each Condition Precedent is satisfied or waived.~~
- (b) The Contractor must satisfy the reminder of the Conditions Subsequent (being other than those in clauses 1.7(b) and 1.7(f)) (or procure their waiver in accordance with clause 1.9) within a reasonable time.

~~(b)~~(c) The Contractor must notify the Principal as each Condition Subsequent is satisfied or waived. When the last Condition Subsequent ~~Precedent~~ to be satisfied has been satisfied or waived, the Principal must confirm by notice to the Contractor that every Condition Subsequent ~~Precedent~~ has been satisfied or waived, and the date upon which the last of the Conditions Subsequent ~~Precedent~~ was satisfied or waived.

1.9 Waiver of Conditions Subsequent ~~Precedent~~

A Condition Subsequent ~~Precedent~~ is only waived if the Principal gives notice of the waiver of the Condition Subsequent ~~Precedent~~ to the Contractor.

1.10 Failure to satisfy by the Condition Subsequent ~~Precedent~~ Deadline

If any ~~of the~~ Conditions Subsequent ~~Precedent~~ ~~is referred to in clause 1.8(a) are not~~ satisfied (or waived in accordance with clause 1.9 by the Conditions Subsequent ~~Precedent~~ Deadline, then:

- (a) the Principal may terminate this Deed upon giving not less than 5 Business Days' notice to the Contractor;
- (b) if the Principal terminates this Deed in accordance with clause 1.10(a) then:
 - (i) the Contractor must, within 5 Business Days of the termination, repay to the Principal the full amount of any Advance Payment made by the Principal to the Contractor:
 - (A) less the value of the Equipment that has been Delivered ~~and Accepted~~;
 - (B) less the value of the Equipment reasonably ordered by the Contractor that it cannot return, provided that such Equipment is delivered to the Principal;
 - (C) and
 - (ii) if not so repaid, the Principal may have recourse to any unconditional undertaking held by it pursuant to this Deed.
 - (iii) neither party will have a Claim against the other party arising out of or in connection with ~~this Deed or its termination of this Deed~~, including due to the failure to satisfy (or procure the waiver of) a Condition Subsequent ~~Precedent~~, ~~except in respect of antecedent breaches of the clauses listed in clause 3 and as set out in clause 1.10(b)(i) above~~ but nothing in this Deed, including its termination, will affect the parties rights and obligations (including to make a Claim) in respect of antecedent breaches of this Deed; and
- (c) for the avoidance of doubt, nothing in this Deed, including its termination, will effect the parties rights and obligations under the initial TTU Contract.