

## Schedule 1 - Key Details

Clause 1 - Definitions and interpretation										
1.	<b>Contract - Other documents forming part of the Contract</b> (Clause <b>Error! Reference source not found.</b> )	<i>[List any other Contract documents]</i> (If nothing is specified, nil.) (Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchaser Order then as above.)								
2.	<b>Cars</b> (Clause <b>Error! Reference source not found.</b> )	<i>[Describe Cars on which work is to be carried out under this Contract]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)								
3.	<b>Contract Price:</b> (Clause <b>Error! Reference source not found.</b> )	<i>[Insert lump sum if applicable or insert 'Calculated in accordance with Schedule 2']</i> (Where the Contract Price is not a lump sum, the Contract Price is calculated in accordance with the rates in Schedule 20 to the L3C Agreement or Schedule 2 (as applicable).)  (Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchaser Order then as above.)								
4.	<b>Contractor's Representative:</b> (Clause <b>Error! Reference source not found.</b> )	Name: [REDACTED] Address: 1 Manchester Road Auburn NSW 2144 Email: <a href="#">Click here to enter text</a> [REDACTED] (Where a Standing Offer Deed exists, as per the Purchase Order.)								
5.	<b>Date for Completion:</b> (Clause <b>Error! Reference source not found.</b> )	Where there are no Separable Portions, for the Works is: <i>[insert - could be expressed as a period of time after each Car is made available by the Principal]</i>  Where there are Separable Portions, for each Separable Portion is:  <table border="0"> <thead> <tr> <th>Separable Portion</th> <th>Date for Completion</th> </tr> </thead> <tbody> <tr> <td><i>[insert]</i></td> <td><i>[insert - Date for Completion]</i></td> </tr> <tr> <td><i>[insert]</i></td> <td><i>[insert - Date for Completion]</i></td> </tr> <tr> <td>.....</td> <td></td> </tr> </tbody> </table> (Where a Standing Offer Deed exists, as per the Purchase Order.)	Separable Portion	Date for Completion	<i>[insert]</i>	<i>[insert - Date for Completion]</i>	<i>[insert]</i>	<i>[insert - Date for Completion]</i>	.....	
Separable Portion	Date for Completion									
<i>[insert]</i>	<i>[insert - Date for Completion]</i>									
<i>[insert]</i>	<i>[insert - Date for Completion]</i>									
.....										
6.	<b>Defects Liability Period:</b> (Clause <b>Error! Reference source not found.</b> )	<i>[insert]</i>  (12 months unless otherwise stated) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, 12 months)								
7.	<b>Principal's Representative:</b> (Clause <b>Error! Reference source not found.</b> )	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)								

8.	<b>Separable Portions of the Works:</b> (Clause <b>Error! Reference source not found.</b> )	[Describe each Separable Portion of the Works or insert 'Not applicable']   (Where a Standing Offer Deed exists, as per the Purchase Order.)										
<b>Clause 2 - Parties' obligations</b>												
9.	<b>Frequency of KPI reporting and times at which Principal and Contractor to meet:</b> (Clause 2.4)	[Insert how frequently in months/days the Contractor must produce a KPI Performance Report]   [Insert how frequently in months/days the Principal and the Contractor must meet to review the Contractor's performance]    (If nothing is specified, the Contractor must provide a KPI Performance Report at the end of each month and the Principal and the Contractor will meet every 3 months, unless otherwise agreed in writing by the Principal.)  (Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchaser Order then as above.)										
<b>Clause 3 - Personnel</b>												
10.	<b>Contractor's key people:</b> (Clause 3.5)	<table border="0"> <thead> <tr> <th data-bbox="624 891 898 925">Person</th> <th data-bbox="898 891 1417 925">Position</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </tbody> </table> (Where a Standing Offer Deed exists, as per the Purchase Order.)	Person	Position	.....	.....	.....	.....	.....	.....	.....	.....
Person	Position											
.....	.....											
.....	.....											
.....	.....											
.....	.....											
<b>Clause 6 - Design and documentation</b>												
11.	<b>Number of copies of Documents (as defined in clause 6.2(a))</b> (Clause 6.2)	..... (2 copies if not otherwise stated). (Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchaser Order then as above.)										
12.	<b>Number of copies of Design Documentation to be submitted or resubmitted by the Contractor to the Principal:</b> (Clause 6.3)	..... (2 copies if not otherwise stated). (Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchaser Order then as above.)										
<b>Clause 8 - Manufacture and production</b>												

13.	<b>Existing Approvals and other Approvals which the Principal is to obtain:</b> (Clause 8.3(b))	<p><i>[Insert any other Approvals that will be obtained by the Principal e.g. a planning Approval]</i>  </p> <p>(If nothing stated, none.)</p> <p>(Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchaser Order then as above.)</p>										
14.	<b>Pre-Approved Subcontractors</b> (Clause 8.5(b))	<table border="1"> <thead> <tr> <th data-bbox="608 383 911 450">Subcontractor</th> <th data-bbox="911 383 1420 450">Part of the Contractor's Activities</th> </tr> </thead> <tbody> <tr> <td data-bbox="608 450 911 510">[insert]</td> <td data-bbox="911 450 1420 510">[insert]</td> </tr> <tr> <td data-bbox="608 510 911 571">[insert]</td> <td data-bbox="911 510 1420 571">[insert]</td> </tr> <tr> <td data-bbox="608 571 911 631"></td> <td data-bbox="911 571 1420 631"></td> </tr> </tbody> </table>	Subcontractor	Part of the Contractor's Activities	[insert]	[insert]	[insert]	[insert]			<p>(Where a Standing Offer Deed exists, as per the Purchase Order.)</p>	
Subcontractor	Part of the Contractor's Activities											
[insert]	[insert]											
[insert]	[insert]											
15.	<b>Warranties required to be procured by the Contractor from Subcontractors and provided to the Principal:</b> (Clause 8.6)	<p>Warranty required from</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p><i>[Insert description of types of equipment or trades from whom subcontractor warranties are required]</i></p> <p>(Where a Standing Offer Deed exists, as per the Purchase Order.)</p>										
16.	<b>ASA Authorisation:</b> (Clause 8.9 and Clause 1.12 of Schedule 4 of the L3C Agreement)	<p><i>[The Contractor or its Subcontractor is the AEO and the Contractor's or its Subcontractor's ASA Authorisation applies OR The Principal is the AEO and the Principal's ASA Authorisation applies]</i></p> <p>(If nothing is stated, the Principal is the AEO and the Principal's ASA Authorisation applies.)</p> <p>(Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchaser Order then as above.)</p>										
17.	<b>Provisional Sum Work</b> (Clauses <b>Error! Reference source not found.</b> and 8.13)	<table border="1"> <thead> <tr> <th data-bbox="608 1352 911 1406">Description of Work</th> <th data-bbox="911 1352 1420 1406">Allowance in Contract Price</th> </tr> </thead> <tbody> <tr> <td data-bbox="608 1406 911 1458">[Insert]</td> <td data-bbox="911 1406 1420 1458">\$ [Insert]</td> </tr> <tr> <td data-bbox="608 1458 911 1518">[Insert]</td> <td data-bbox="911 1458 1420 1518">\$[insert]</td> </tr> </tbody> </table>	Description of Work	Allowance in Contract Price	[Insert]	\$ [Insert]	[Insert]	\$[insert]				
Description of Work	Allowance in Contract Price											
[Insert]	\$ [Insert]											
[Insert]	\$[insert]											
18.	<b>Percentage for additional profit and attendance for Provisional Sum Work exceeding provisional sum allowance</b> (Clause 8.13(f))	<div style="background-color: black; width: 100px; height: 15px; display: inline-block;"></div>										
<b>Clause 10 - Time</b>												
19.	Not used											

20.	<b>Cap on delay costs</b> (Clause <b>Error! Reference source not found.</b> )	<p>§[insert] per day</p> <p>(If nothing is stated, [REDACTED])</p> <p>(Where a Standing Offer Deed exists, as per the Purchase Order or if nothing stated in the Purchase Order then as above.)</p>
21.	<b>Percentage of extra costs reasonably incurred due to Acceleration for overhead and profit</b> (Clause <b>Error! Reference source not found.</b> )	[REDACTED] of the costs incurred under clause <b>Error! Reference source not found.</b>
<b>Clause 11 - Variations</b>		
22.	<b>Percentage adjustments for valuing a Variation:</b> (Clause 11.3(d))	<p>(a) For non-time related overheads and profit where the adjustment is to be an increase: [REDACTED]</p> <p>(b) For overheads and profit where the adjustment is to be a decrease: [REDACTED]</p>
<b>Clause 13 - Completion</b>		
23.	<b>Liquidated damages payable by Contractor when Date of Completion occurs after Date for Completion</b> (Clause 13.6)	<p>[REDACTED] that is subject to the relevant Works per day; plus</p> <p>[REDACTED] that is subject to the relevant Works per day.</p> <p>(Where a Standing Offer Deed exists, as per the Purchase Order or if nothing is stated in the Purchase Order [REDACTED])</p>
24.	<b>Cap on liquidated damages</b> (Clause 13.8)	[REDACTED] of the Contract Price
<b>Clause 18 - Limitation of liability</b>		
25.	<b>Limitation of liability (Contractor):</b> (Clause 18(a))	<p>An amount equal to:</p> <p>[REDACTED]</p>

26.	<b>Limitation of liability (Principal):</b> (Clause 18(g))	An amount equal to: <ul style="list-style-type: none"> <li>a) the Contract Price as adjusted from time to time, including on account of any Variations but without reducing the Contract Price for any amounts deducted under clause 9.10; plus</li> <li>b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any delay costs under clause <b>Error! Reference source not found.</b> and any suspension costs under clause <b>Error! Reference source not found.</b></li> </ul>
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## **Schedule 2 - Payment Schedule**

As set out in the Purchase Order (if applicable).

## Schedule 3 Certificate of Readiness

### Certificate of Readiness

**Certificate number:**

**Set number:**

**Car number(s):**

**Next inspection due:**

This Certificate of Readiness certifies that the Contractor's Activities on this train have been carried out in accordance with the Contract and all safety, braking and alarms systems are operating and this train is hereby authorised for service on behalf of UGL Unipart Rail Services Pty Ltd ACN 154 895 940.

Contractor's Representative

\_\_\_\_\_  
Signature Contractor's Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name

\_\_\_\_\_

**Schedule 4 Not used**



## Schedule 5 Intellectual Property

### 1.1 Definitions

In this Schedule 5, unless the context indicates otherwise:

**COTS** has the meaning assigned to it in the L3C Agreement.

**IP Listing** has the meaning assigned to it in the L3C Agreement.

**Integration Services** has the meaning assigned to it in the L3C Agreement.

**Key Provider** has the meaning assigned to it in the L3C Agreement.

**OEM** has the meaning assigned to it in the L3C Agreement.

**Pre-existing L3C Contractor Material** has the meaning assigned to it in the L3C Agreement.

**Principal Hardware** has the meaning assigned to the term "Sydney Trains Hardware" in the L3C Agreement.

**Principal Operating Environment** has the meaning assigned to the term "Sydney Trains Operating Environment" in the L3C Agreement.

**Rail Infrastructure Facilities** has the meaning assigned to it in the L3C Agreement.

**Reference Documents** has the meaning assigned to it in the L3C Agreement.

**Related Counterparty** has the meaning assigned to it in the L3C Agreement.

**Replacement Contractor** has the meaning assigned to it in the L3C Agreement.

**Software** has the meaning assigned to it in the L3C Agreement.

**Software Listing** has the meaning assigned to it in the L3C Agreement.

**Sydney Trains Material** has the meaning assigned to it in the L3C Agreement.

**System** has the meaning assigned to it in the L3C Agreement.

**Third Party Deliverables** is anything prepared by or on behalf of an OEM or the owner of Third Party Software pursuant to any of the activities described in paragraphs 1.2(d)(i) to 1.1(d)(vi) of this Schedule 5, but for the avoidance of doubt excludes COTS.

**Third Party Intellectual Property** has the meaning assigned to it in the L3C Agreement.

**Third Party Licences** has the meaning assigned to it in the L3C Agreement.

**Third Party Software** has the meaning assigned to it in the L3C Agreement.

**UGL Rail Maintenance Documents** has the meaning assigned to it in the L3C Agreement.

**Update** has the meaning assigned to it in the L3C Agreement.

**Versions** has the meaning assigned to it in the L3C Agreement.

### 1.2 Rights to Intellectual Property

- (a) The parties acknowledge and agree that the Principal will retain all rights, title and interest (including Intellectual Property) in the Sydney Trains Material.

- (b) The parties acknowledge and agree that the Contractor, or an applicable Key Provider, will retain all rights, title and interest (including Intellectual Property) in the Pre-existing L3C Contractor Material and the UGL Rail Maintenance Documents.
- (c) Except to the extent provided for in clause 1.2(e), the Contractor assigns to the Principal all:
- (i) the benefit of the Deliverables and all rights arising from them in Australia and elsewhere (including all Intellectual Property); and
  - (ii) corresponding rights obtainable in respect of the Deliverables,
- absolutely from the date such a Deliverable is developed, created or otherwise made.
- (d) The Deliverables are:
- (i) all improvements to, or any modification, adaptation or development of or to, the Sydney Trains Material made by the Contractor, or on behalf of the Contractor by anyone other than the Principal;
  - (ii) anything that is created or developed by the Contractor, or on behalf of the Contractor by anyone other than the Principal, using the Sydney Trains Material;
  - (iii) all work processes, procedures, and methods, specifications, guidelines, know-how and technical information that is documented by the Contractor in the performance of the Works or Contractor's Activities;
  - (iv) all data, code, outputs or other information (in any format) produced for the purpose of the performance of the Works or Contractor's Activities by, derived through or arising from the operation of any systems or software operated, supplied or used by the Contractor in performing the Works or Contractor's Activities;
  - (v) anything developed or created by or on behalf of the Contractor in the performance of the Works or Contractor's Activities; and
  - (vi) all items, materials, documentation (including the Design Documentation and any plans, drawings, manuals and specifications) and products produced, created or developed for the Principal by or on behalf of the Contractor as part of providing the Equipment, Works or Contractor's Activities for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed prior to the Award Date,
- but excludes any:
- (vii) Pre-existing L3C Contractor Material or UGL Rail Maintenance Documents; or
  - (viii) Intellectual Property that vests in an OEM or the owner of Third Party Software.
- (e) The Contractor must in respect of:
- (i) any Design Documentation prepared by or on behalf of an OEM or an owner of Third Party Software; or
  - (ii) Third Party Deliverables prepared by or on behalf of an OEM or owner of Third Party Software that is a Related Counterparty,

do the following:

- (iii) use its best endeavours to procure that the OEM or the owner of Third Party Software assigns to the Principal the benefit of, and rights in the Design Documentation or Third Party Deliverable (as applicable) and all rights arising from them in Australia and elsewhere (including all Intellectual Property) absolutely from the date such Design Documentation or Third Party Deliverable is developed; or
- (iv) to the extent, despite having used best endeavours, the Contractor cannot assign or procure the assignment of the benefit of and rights in, the Design Documentation or Third Party Deliverable to the Principal in accordance with clause 1.2(e)(iii), procure that the OEM or the owner of Third Party Software grants to the Principal a non-exclusive, irrevocable, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property comprised in or subsisting in the Design Documentation or Third Party Deliverable (as applicable) to:
  - A. allow the Principal the full benefit and enjoyment of the Works or Contractor's Activities and the Design Documentation or Third Party Deliverable (as applicable);
  - B. use the Design Documentation or Third Party Deliverable (as applicable) in connection with:
    - 1) the Works or Contractor's Activities or similar;
    - 2) the procurement of Equipment, parts, equipment or plant;
    - 3) the maintenance, or testing, of any Cars or the Principal's property;
    - 4) the procurement or performance of any works, activities, goods or services in connection with the upgrade or refurbishment of the Cars or the Equipment or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal or any Rail Transport Agency;
    - 5) the installation, operation, maintenance and monitoring of the Cars, the Equipment, the Works or Contractor's Activities or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal or any other Rail Transport Agency;
    - 6) the integration of the Equipment with any other plant, equipment, infrastructure or systems owned, operated or maintained by the Principal or any Rail Transport Agency; or
    - 7) any other Principal purpose; and
  - C. disclose the Design Documentation or Third Party Deliverable (as applicable) on a confidential basis to third parties for the purposes of a re-tender process for the Works or Contractor's Activities and for any procurement in connection with the matters set out in this clause 1.2(e); and

- (v) in respect of any Third Party Deliverable to which clause 1.2(e)(i) or clause 1.2(e)(ii) does not apply:
  - A. use its best endeavours to procure that an OEM or the owner of Third Party Software assigns to the Principal the benefit of the Third Party Deliverable in accordance with clause 1.2(e)(iii); and
  - B. to the extent, despite having used best endeavours, the Contractor cannot assign or procure the assignment of the benefit of, and rights in, the Third Party Deliverable to the Principal in accordance with clause 1.2(e)(iii), use its best endeavours to procure that the OEM or the owner of Third Party Software grants a licence in respect of the Third Party Deliverable on the same licence terms as described in clause 1.2(e)(iv); and
  - C. to the extent, despite having used best endeavours, the Contractor cannot obtain the licence described in clause 1.2(e)(v)B, comply with clause 1.3 or clause 1.5 (as applicable).
  
- (f) For the purposes of clauses 1.2(e)(v)A and 1.2(e)(v)B, an obligation of the Contractor to use best endeavours shall require the Contractor to use best endeavours to procure the relevant assignment or licence at no fee, and to the extent, despite having used best endeavours, the Contractor cannot procure the assignment or licence for no fee, the Contractor must use best endeavours to procure the assignment or licence at the best commercial rates available from the OEM or owner of Third Party Software, in which case the Principal agrees to fully reimburse the Contractor for any such fee (provided that the Principal has agreed in writing to the terms of the assignment or licence and the proposed fee prior to the Contractor reaching agreement with the OEM or the owner of the Third Party Software (as applicable)). The Principal's agreement shall not be unreasonably delayed.
  
- (g) The Contractor grants, or must procure the grant of, a non-exclusive, perpetual, irrevocable, royalty free and non-transferable licence in favour of the Principal to:
  - (i) use, reproduce, adapt or develop; and
  - (ii) sublicense any other person to use, reproduce, adapt or develop,
 all of the UGL Rail Maintenance Documents in connection with:
  - (iii) the Works or Contractor's Activities or similar;
  - (iv) the procurement of Equipment, parts, equipment or plant;
  - (v) the maintenance, or testing, of any Cars or the Principal's property; or
  - (vi) any other Principal purpose,
 and to disclose on a confidential basis to third parties for the purposes of a re-tender process for the Works or Contractor's Activities and for any procurement in connection with the matters set out in this paragraph (g), but excluding the ability of the Principal, or any other person, to Commercialise (as defined in the L3C Agreement) that Intellectual Property, or any other rights, licensed to the Principal under this clause 1.2(g) of this Schedule 5.
  
- (h) The Contractor grants, or must procure the grant of, an irrevocable, royalty free licence in favour of the Principal to:

- (i) use, reproduce, adapt or develop; and
  - (ii) sublicense any other person to use, reproduce, adapt or develop,
- all of the Pre-existing L3C Contractor Material, to the extent necessary for the purposes of:
- (iii) receiving the full benefit of the Works or Contractor's Activities;
  - (iv) integrating the Works or Contractor's Activities with the Principal's other operations, including:
    - A. the procurement of Equipment, parts, equipment or plant; or
    - B. the maintenance, or testing, of any Cars or the Principal's property.

- (i) The Contractor undertakes at its own expense to do all acts and execute all documents necessary or desirable for perfecting the title of the Principal to rights that must be assigned, or licensed, under this clause 1.2 of this Schedule 5 and the Contractor hereby appoints the Principal as its attorney for it and in its name and on its behalf for such purpose.
- (j) The Contractor must deliver up to the Principal on request all certificates of title, papers, reports, documents and other items in relation to the rights that must be assigned, or licensed, to the Principal pursuant to this clause 1.2 of this Schedule 5.

### **1.3 Licence of Sydney Trains Material and Deliverables**

- (a) The Principal grants to the Contractor a non-exclusive, royalty free, non-transferable licence until:
  - (i) the later of the expiry of the Defects Liability Period; or
  - (ii) the earlier termination of this Contract,

to:

  - (iii) use; and
  - (iv) reproduce, adapt and develop,

the Sydney Trains Material and the Deliverables, for the sole purpose of carrying out the Works or Contractor's Activities.
- (b) The Contractor may sublicense its rights set out in this clause 1.3 of this Schedule 5 to its Subcontractors until:
  - (i) the later of the expiry of the Defects Liability Period; or
  - (ii) the earlier termination of this Contract,

but only for the sole purpose of the Subcontractor performing its obligations under the relevant subcontract to facilitate the carrying out of the Works or Contractor's Activities.
- (c) The Principal reserves all other rights in the Sydney Trains Material and the Deliverables.

## 1.4 Licence for Third Party Intellectual Property

- (a) Except to the extent that the Contractor has procured an assignment or licence in accordance with clause 1.2(e) of this Schedule 5 in favour of the Principal, the Contractor must procure the grant of an irrevocable, royalty free licence in favour of the Principal to:
- (i) use, reproduce, adapt or develop; and
  - (ii) sublicense any other person to use, reproduce, adapt or develop,
- the Third Party Intellectual Property (including any Third Party Deliverable that is Third Party Intellectual Property) to the extent necessary to ensure that the Principal receives the benefit of the Works or Contractor's Activities.
- (b) When procuring a licence in accordance with clause 1.4(a) of this Schedule 5, the Contractor must, if a perpetual licence is available at no material additional cost, procure for the Principal a perpetual licence.

## 1.5 Licence for the Reference Documents

- (a) The Principal grants to the Contractor a non-exclusive, royalty free, non-transferable sublicense until the earlier termination of this Contract to use the Reference Documents for the sole purpose of providing the Works or Contractor's Activities.
- (b) The Contractor must not:
- (i) except to the extent the Reference Documents are owned by the Contractor or licensed to the Contractor by a Key Provider reproduce, adapt or otherwise develop the Reference Documents;
  - (ii) assign, novate or otherwise transfer its interest in the licence provided under clause 1.4(a) of this Schedule 5; or
  - (iii) sublicense the rights provided under clause 1.5(a) of this Schedule 5, except in accordance with clause 1.5(c) of this Schedule 5.
- (c) Provided that the Intellectual Property in the Reference Documents is owned by the Principal, or licensed to the Contractor by a Key Provider, then the Contractor may sublicense the rights provided under clause 1.5(a) of this Schedule 5 to its Subcontractors to the extent necessary to satisfy its obligations under this Contract.
- (d) The Contractor acknowledges and agrees that the Reference Documents are Confidential Information (as defined in the L3C Agreement) of the Principal.

## 1.6 Third Party Software

- (a) Except to the extent that the Contractor has procured an assignment or licence in accordance with clause 1.2(e) in favour of the Principal, the Contractor must procure the grant of an irrevocable, royalty free licence in favour of the Principal to:
- (i) use, reproduce, adapt or develop; and
  - (ii) sublicense any other person to use, reproduce, adapt or develop,
- the Third Party Software (including any Third Party Deliverable that is Third Party Software) to the extent necessary to ensure that the Principal receives the full benefit of the Works or Contractor's Activities.
- (b) When procuring a licence in accordance with clause 1.6(a) of this Schedule 5, the Contractor must:

- (i) where a perpetual licence is available at no material additional cost, procure for the Principal a perpetual licence; and
  - (ii) where Third Party Software is installed on or supplied together and for use with Equipment, ensure that the term of the licence for that Third Party Software extends for (at a minimum) the full service life of that Equipment.
- (c) The Contractor must, if and to the extent required by the Principal, sublicense or assign the Contractor's rights under, or cause a novation of the Contractor's rights and obligations under, or assist the Principal to obtain direct rights to, Third Party Licences to the Principal, or a Replacement Contractor nominated by the Principal in writing:
- (i) on termination or expiry of this Contract for whatever reason; or
  - (ii) in order to permit the Principal to exercise Step-In Rights in accordance with clause 16 of this Contract.
- (d) In respect of any such sublicense, assignment, novation, or any such direct rights obtained:
- (i) each party will bear its own costs in connection with effecting the assignment or novation, or obtaining direct rights;
  - (ii) the Principal will pay, or will ensure the Replacement Contractor pays, all costs and expenses under such Third Party Licences referable to any period after the date of their assignment or novation;
  - (iii) without derogating from clause 1.9 of this Schedule 5, the Contractor must do all acts and things reasonably requested by the Principal to enable the Principal, or the Replacement Contractor (as applicable), to:
    - A. obtain copies of, and otherwise be apprised of all of the terms of, and communications and information concerning, the Third Party Licences and their performance;
    - B. exercise, perform and enforce all rights and obligations under the Third Party Licences, as if named as the Contractor; and
    - C. receive full benefits accruing to the Contractor under the Third Party Licences; and
  - (iv) on and from the date of the assignment or novation of, or obtaining direct rights to, such Third Party Licences, the Principal, or the Replacement Contractor (as applicable), will assume all obligations of the Contractor under such Third Party Licences that arise on and from such date.
- (e) The Contractor must do all things necessary to perfect the licences granted to the Principal pursuant to this clause 1.6 of this Schedule 5 and otherwise to give effect to the Contractor's obligations under this clause 1.6 of this Schedule 5. The Contractor irrevocably appoints the Principal, or such other person as the Principal nominates from time to time, as the Contractor's attorney to do such acts and things, in the Contractor's name, as the Principal reasonably requires in order to exercise its rights under this clause 1.6 of this Schedule 5.

## 1.7 Updates and Versions

- (a) This clause 1.7 only applies to any Third Party Software that is supplied by the Contractor to the Principal under this Contract, and in respect of which the Contractor provides (or procures that a third party provides) support services.

- (b) The Contractor must promptly notify the Principal of any Updates or Versions which have become available from the owners of such Updates or Versions together with the Contractor's understanding of the implications of such Updates and Versions.
- (c) The Principal will within 30 Business Days of notification under clause 1.7(a) of this Schedule 5 (as relevant), advise the Contractor if it requires the Contractor to supply and implement such Updates or Versions to the Principal.
- (d) On receipt of such notification under clause 1.7(b) of this Schedule 5, the Contractor must within 10 Business Days commence the supply and implementation of such Updates or Versions to the Principal. The supply and implementation must be completed within 20 Business Days of the commencement of the supply and implementation (or such other time period as the parties may reasonably agree).
- (e) The Contractor must deliver, each time a new Update or Version is supplied and implemented in connection with Software, a copy of the source code to the Escrow Agent on the terms of Escrow Agreement.
- (f) If the Principal decides not to accept any Update or Version, the Contractor must continue to provide support in accordance with this Contract for the current system used by the Principal until the expiry of the Defects Liability Period.
- (g) The Contractor acknowledges and agrees that:
  - (i) the Principal is not obliged to accept or use any Update or Version; and
  - (ii) non-acceptance or non-use of any Update or Version by the Principal does not relieve the Contractor in any way from complying with the Contractor's obligations, representations and warranties under this Contract.

## 1.8 Software Listing

- (a) On the Award Date and every 12 months thereafter, or upon request by the Principal, the Contractor must deliver the Software Listing, and the IP Listing, to the Principal.
- (b) Within 10 Business Days of use by the Contractor of:
  - (i) any Software which is not specified in the Software Listing; or
  - (ii) any Intellectual Property which is not in the IP Listing,
 in connection with the Works or Contractor's Activities, the Contractor must provide the following information in writing to the Principal:
  - (iii) name and release version of the Software or Intellectual Property;
  - (iv) owner and distributor of the Software or Intellectual Property together with their direct contact details;
  - (v) whether the Software is Third Party Software;
  - (vi) whether the Intellectual Property is Third Party Intellectual Property;
  - (vii) the duration of any licence and maintenance agreements;
  - (viii) any licence and maintenance fees and similar fees; and
  - (ix) confirmation that the Software or Intellectual Property is the subject of the warranty in clause 1.9 of this Schedule 5.



- (c) Within 20 Business Days of receipt of the Software Listing provided by the Contractor under clause 1.8(a) of this Schedule 5 or the information under clause 1.8(b) of this Schedule 5, the Principal may dispute the Contractor's identification of Software as Third Party Software by written notice to the Contractor. If the parties are unable to agree on this issue within a reasonable time, a party may refer the dispute for resolution under clause 15.

## 1.9 Warranties by Contractor

The Contractor represents and warrants that:

- (a) it has or will have all appropriate licences of, or title to, the rights contemplated by this Schedule 5 and the Third Party Software which are required for the purposes of this Contract by such time as they are required for the purposes of this Contract;
- (b) the rights in the Sydney Trains Material, Deliverables, Pre-existing L3C Contractor Material, the UGL Rail Maintenance Documents, Third Party Deliverables and Third Party Intellectual Property contemplated by this Schedule 5, and the Third Party Software, are all the rights that are required by the Contractor to provide the Works or Contractor's Activities or any part thereof;
- (c) the rights in the Sydney Trains Material, Deliverables, Pre-existing L3C Contractor Material, the UGL Rail Maintenance Documents, Third Party Deliverables, and Third Party Intellectual Property contemplated by this Schedule 5, and the Third Party Software, will be, and will remain, compatible with the systems, frameworks and software used by the Principal as required by the Statement of Works;
- (d) the use by the Principal and any person authorised by it of the rights in the Sydney Trains Material, Deliverables, Pre-existing L3C Contractor Material, Third Party Deliverables, the UGL Rail Maintenance Documents and Third Party Intellectual Property contemplated by this Schedule 5 will not infringe any patent, trade mark, registered design, copyright or similar or other intellectual or industrial property rights of any person nor give rise to payment by the Principal of any authorised person of any royalty to any third party or to any liability to pay compensation;
- (e) every item of Software used or to be used in the provision of the Works or Contractor's Activities is contained in the Software Listing or later identified in accordance with clause 1.8(b) of this Schedule 5; and
- (f) it has the authority to undertake the obligations concerning the Intellectual Property contemplated by this Schedule 5 and the Third Party Software contained in this Schedule 5.

## 1.10 Infringements

- (a) The Principal must notify the Contractor as soon as practicable of any of the following things which the Principal knows about (the Principal will only be deemed to know about these things if they are known to individual employees or officers of the Principal whose management responsibilities are such as to equate their knowledge with the knowledge of the Principal):
  - (i) the threatened or actual infringement of any Intellectual Property contemplated by this Schedule 5 or the Third Party Software by a third party; or
  - (ii) an action, claim or demand that the Works or Contractor's Activities infringes the Intellectual Property of any third party.
- (b) The Contractor must, if requested by the Principal, defend and hold harmless the Principal against any claim of the type referred to in clause 1.10(a) of this Schedule 5 (including by way of making a cross-claim in the relevant proceedings)

to the extent the claim alleges that any material that the Principal has a right to under this Contract infringes the Intellectual Property of any person.

- (c) The Principal will give the Contractor such assistance as the Contractor reasonably requests in order to deal with an Intellectual Property infringement claim (whether by way of action, defence or otherwise) which is reasonably likely to materially affect the Principal's exercise of rights or the Contractor's performance of obligations under this Contract. Any cost, expenses or damages incurred by the Principal in complying with this clause 1.10(c) of this Schedule 5 are a debt due and payable by the Contractor to the Principal.

### **1.11 Contractor to rectify infringements**

Without limiting or otherwise restricting clause 6.6 and except to the extent caused by a contravention of this Contract by the Principal, if as a result of any claim of the kind referred to in clause 1.10 of this Schedule 5 the Principal is required by Law to cease (whether because of court order or otherwise) or, acting reasonably, ceases or proposes to cease, any exercise of the Intellectual Property contemplated by this Schedule 5, or the Third Party Software, the Contractor must, at the Contractor's sole cost and expense:

- (a) secure for the Principal the right to continue such exercise;
- (b) replace associated Intellectual Property with non-infringing Intellectual Property;
- (c) modify any materials, Equipment, Software, devices, or processes so that they become non-infringing; or
- (d) only where the actions described in paragraphs (a) to (c) are not reasonably feasible and with the Principal's prior consent, remove any materials, Equipment, Software, devices, or processes that are infringing and refund sums paid for them without prejudice to any other rights of the Principal.

### **1.12 Escrow of Software**

- (a) The Contractor must maintain a copy of:
  - (i) the source code; and
  - (ii) all documentation necessary to understand and use the source code,for the current and any immediately preceding versions (excluding any preceding version in existence before the Award Date) of any Third Party Software that will be supplied by the Principal, if the Contractor has the appropriate rights to access that source code, from the date supplied to the Principal in accordance with this Contract, (irrespective of whether or not it has been especially customised or developed for the purposes of this Contract or developed by the Contractor), in escrow with the Escrow Agent on the terms of the Escrow Agreement. The Contractor must procure such amendments to the Escrow Agreement as may be reasonably necessary to give effect to this Contract and the provisions relating to the Escrow Agreement and provide the Principal with a duly completed and executed updated Escrow Agreement as a condition precedent to Completion.
- (b) Subject to clause 1.12(c) of this Schedule 5, the Principal will be entitled, at no cost to the Principal, to be provided with this source code at any time if the Principal reasonably requires this source code to exercise its rights under this Schedule 5.
- (c) In circumstances specified in clause 1.12(b) of this Schedule 5, the Contractor acknowledges and agrees the Escrow Agent will release the source code to the Principal in accordance with the Escrow Agreement after receipt of a written notice from the Principal to the Escrow Agent specifying the conditions which justify the release. If the Contractor disputes the release then it must give notice to both the Principal and the Escrow Agent of that dispute and containing particulars of the

dispute. Unless the dispute is resolved between the Contractor and the Principal, the dispute will be dealt with in accordance with clause 15.

- (d) The Principal must return to the Escrow Agent any source code released to the Principal in accordance with this clause 1.12 of this Schedule 5 as soon as practical after the Principal no longer reasonably requires it to exercise its rights under this clause 1.12 of this Schedule 5 and otherwise in accordance with the Escrow Agreement.

### **1.13 Physical Material**

- (a) The Contractor must make available to the Principal at the Site:

- (i) on the Award Date;
- (ii) on Completion;
- (iii) upon the termination or expiry of this Contract; and
- (iv) at other times reasonably requested by the Principal,

such physical media (including specifications, instructions, drawings, manuals, bulletins and electronic tools), together with copies provided in soft media, embodying:

- (v) all material, documents and information contemplated by clause 1.2 of this Schedule 5; and
- (vi) the Third Party Software which the Contractor has appropriate rights to provide,

as the Principal reasonably requests to enable it to exercise fully its rights under this Contract.

### **1.14 Moral Rights**

The Contractor:

- (a) must ensure that it does not, and its Personnel do not, infringe any moral right in any artistic work in carrying out the Works or Contractor's Activities;
- (b) must ensure that it obtains irrevocable consent, including for the benefit of the Principal, from the author of any artistic work to be incorporated into or used during the provision of the Works or Contractor's Activities, including any necessary consents from its Personnel to:
  - (i) any non-attribution or false attribution of the artistic work;
  - (ii) repairs to, maintenance and servicing of, additions, refurbishments or alterations to, changes, relocation, destruction or replacement of the whole or any part of the artistic work or the Works or Contractor's Activities; and

The terms "moral right" and "artistic work" have the same meaning as in the Copyright Act 1968 (Cth).

### Schedule 6 Principal Supplied Items

(Clauses **Error! Reference source not found.**, 5.1 and 7.2)

The items listed in the table below are the Principal Supplied Items. These items will be made available to the Contractor at **[Insert]** from the dates set out in in the table below and are to be returned to **[Insert]**:

Serial .No	Product Description	Total Qty	Date of Availability

As set out in the Purchase Order.

## Schedule 7 - Policies, Codes and Standards

Schedule 21 of the L3C Agreement is incorporated by reference into this Contract.

All clause references in this Schedule are references to clauses in this Schedule unless otherwise indicated.

Capitalised terms in this Schedule have the same meaning as in the General Conditions.

Any reference in this Schedule to a policy, guideline or other document is a reference to such policy, guideline or document as updated or replaced from time to time.

This Schedule applies without limiting any of the Contractor's obligations under the General Conditions.

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### 1. Ariba Network

The Contractor acknowledges that:

- (a) the Principal generally conducts business with contractors electronically, including by transacting and exchanging data with contractors for the purposes of:
  - (i) creating purchase orders and for the acknowledgement of the receipt of purchase orders;
  - (ii) processing invoices and payments;
  - (iii) conducting spend analyses; and
  - (iv) supplier management;
- (b) as at the date of the Contract, the Principal uses:
  - (i) the Ariba Spend Management™; and
  - (ii) the Ariba Contractor Network™,(collectively, **Ariba**) as the platform for transacting and exchanging data with panel contractors;
- (c) if the Contractor is requested by the Principal to register as a "supplier" on Ariba, the Contractor must, at its own cost, do all things necessary to give effect to such request; and
- (d) the Principal may from time to time, in its absolute discretion, nominate a platform or tool other than Ariba as the platform for transacting and exchanging data with panel contractors, in which case, the Contractor must do all things required by the Principal, at its own cost, to enable transactions and the exchange of data to be undertaken using such other platform or tool.

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### 2. Statement of Business Ethics

- (a) Prior to the engagement of any Subcontractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Principal's or any Rail Transport Agency's Statement of Business Ethics found at <https://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors> that is one of the Policies, Codes and Standards. The Contractor must retain the documentation required by this clause 2(a) for a period

of seven years and must provide such documentation to the Principal as and when requested.

- (b) If a person has committed a material breach of the Principal's statement of business ethics and the Contractor has material information, knowledge of, or believes that such a breach has been committed, the Contractor must notify the Principal's Representative of such information, knowledge or belief.

## Schedule 8 Deed Poll for Standing Offer Deed

This deed poll (**Deed Poll**) made on the date of execution of this deed poll

**By:** UGL Unipart Rail Services Pty Ltd ACN 153 895 940 of Level 10, 40 Miller Street North Sydney NSW 2000 (**L3C Contractor**),

**in favour of:** Rail Corporation New South Wales (ABN 59 325 778 353) of 477 Pitt Street, Sydney NSW 2000 (**RailCorp**)

NSW Trains (ABN 50 325 560 455) of 470 Pitt Street, Sydney NSW 2000 (**NSW Trains**).

Transport for NSW (ABN 18 804 239 602) of 18 Lee Street, Chippendale NSW 2008 (**Transport for NSW**).

### Recitals

- A RailCorp owns the rail network and rail assets in NSW, including those in respect of which the Contractor's Activities will be provided by the Contractor.
- B Sydney Trains (ABN 38 284 779 682) (**Principal**) is responsible for the operation of passenger services in Sydney.
- C NSW Trains is responsible for the operation of passenger services in NSW outside Sydney.
- D Transport for NSW is responsible for the governance and delivery of transport services and infrastructure in NSW.
- E The Principal has entered into a standing offer deed with the Contractor dated on or about the date of this Deed Poll (**Deed**) under which separate contracts may be formed from time to time for Contractor's Activities (**Contracts**).
- F It is a condition of the Deed that the Contractor executes this Deed Poll.

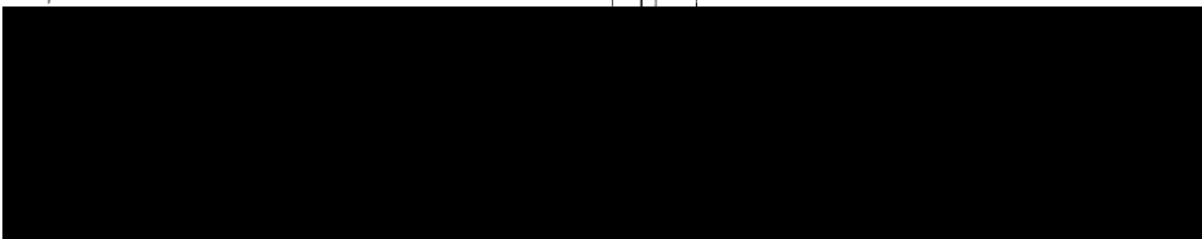
**This deed witnesses that the Contractor hereby covenants, warrants and agrees with and for the benefit of RailCorp, NSW Trains and Transport for NSW as follows:**

1. It will comply with its obligations under the Deed and each Contract.
2. Upon completion of the Contractor's Activities under each Contract, the Contractor's Activities will satisfy the requirements of the Contract.
3. The aggregate of the Contractor's liability to RailCorp under this Deed Poll, the Contractor's liability to NSW Trains under this Deed Poll, the Contractor's liability to Transport for NSW under this Deed Poll and the Contractor's liability to the Principal under each Contract:
  - (a) will not exceed the aggregate liability limitation which the Contractor has to the Principal. under each Contract and
  - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Contracts.
4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.

5. Subject to clause 3 wherever, pursuant to the terms of the Contract, the Contractor gives an indemnity in favour of the Principal, the Contractor gives the same indemnity in favour of RailCorp, NSW Trains and Transport for NSW as if the relevant terms of the indemnity were set out in full in this Deed Poll.
6. RailCorp, NSW Trains or Transport for NSW may at any time, at their sole discretion, assign or novate this Deed Poll (or any right, benefit or interest thereunder) to any Authority, any successor in title to RailCorp, NSW Trains or Transport for NSW, or any other Authority that assumes the functions or obligations of either RailCorp, NSW Trains or Transport for NSW.
7. This Deed Poll is governed by the laws of the State of New South Wales.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp, NSW Trains and Transport for NSW.
9. Where terms used in this Deed Poll are defined in the Deed or a Contract, those terms have the meaning given to them in the Deed or the Contract (as the case may be).

**Executed** as a deed poll.

**Executed by UGL Unipart Rail Services Pty Limited ACN 154 895 940** in accordance with section 127 of the Corporations Act 2001 (Cth):



Date | 10/01/2020

Date | 10/1/20



## Schedule 9 Form of Subcontractor Warranty

This Deed Poll is made on the date the Warrantor executes this Deed Poll.

To: **Sydney Trains** ABN 38 284 779 682 of Level 20, 477 Pitt St, Sydney NSW (**Principal**)

**[Add other beneficiaries as nominated by Sydney Trains]** (**Beneficiary**).

By: That person described in Item 1 of the Schedule (**Warrantor**) which expression will include its successors and assigns

### Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (**Equipment or Services**) to the person described in Item 3 of the Schedule (**Contractor**) or the person described in Item 4 of the Schedule, a subcontractor of the Contractor (**Subcontractor**), for the works (**Works**) being carried out by the Contractor under the contract described in Item 5 of the Schedule (**Contract**) with the Principal.
- B. It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment or Services.

### Operative

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#### 1. Quality

The Warrantor:

- (a) warrants to the Principal and the Beneficiary that the Equipment or Services will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment or Services.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment or Services.

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#### 2. Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment or Services, as within the period described in Item 7 of the Schedule:

- (a) are found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment or Services ought to be made good or replaced in order to achieve fitness for the purpose for which they are required, whether on account of utility, performance, appearance or otherwise.

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**3. Warrantor to bear cost**

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

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**4. Principal not liable**

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

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**5. This deed poll may not be revoked**

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

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**6. Governing law**

This deed poll is governed by the laws of the State of New South Wales.

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**7. Jurisdiction**

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

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**8. Enforcement of this deed poll**

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

## Schedule

Item 1: [Name and Address of Warrantor]

Item 2: [Equipment or Services |  
(Recital A)

Item 3: [Contractor]  
(Recital A)

Item 4: [Subcontractor |  
(Recital A)

Item 5: [Contract]  
(Recital A)

Item 6: [Detailed Warranty of Warrantor |  
(Clause 1(b))

Item 7: [The later of:

(a) 2 years from the date that the applicable Equipment is installed or Services are performed (as applicable) in accordance with the General Conditions; or

(b) 2 years from the expiry of the last "Defects Liability Period" as defined in the General Conditions (including any extension under clause 9.12 of the General Conditions).

(Clause 2)

**Executed** as a deed poll.

**Executed** by **[insert name of Warrantor]** (ABN **[insert ABN]**) in accordance with s 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Date

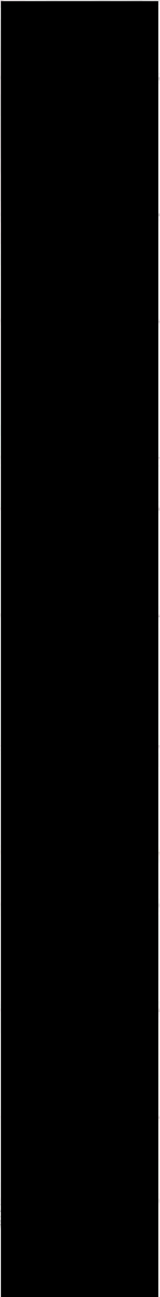
\_\_\_\_\_  
Date

## **Schedule 10 - Form of Declaration**

Schedule 7 of the L3C Agreement is incorporated by reference into this Contract.

## Schedule 11 KPIs

There may be additional KPIs applicable to the Contractor's Activities. See Annexure D of the Standing Offer Deed .

Key Performance Indicator (KPIs)		Measure	Target (per Contract)	
<b>Safety and environment</b>				
1.	Minor incidents	Number of minor safety/environmental incidents and near misses		
2.	Major incidents	Number of major safety/environmental incidents, including Lost Time Injuries (LTIs), Medical Treatment Injuries (MTIs) and safe working incidents		
3.	Incident reporting	Percentage of safety/environmental incidents reported on within the timeframe and in the format specified by the Principal		
4.	Corrective actions	Percentage of corrective actions closed out within the timeframe specified by the Principal following inspection/audit/investigation by the Principal		
<b>Delivery</b>				
5.	Delivery In Full On Time (DIFOT)	Percentage of Contractor's Activities commenced and completed in accordance with contractual timeframes		
6.	Rectification of defects or errors	Percentage of defects or errors in Contractor's Activities rectified or replaced within timeframe specified by the Principal		
7.	Management of subcontractors	Number of complaints received by the Principal in relation to non-payment of subcontractors		
<b>Quality</b>				
8.	Quality of workmanship	Number of instances of poor quality workmanship, including any damage to existing infrastructure and property		
9.	Skills and experience of Personnel	Number of incidents of Contractor's Personnel who are not competent and/or appropriately accredited, qualified, licensed and/or trained		
10.	Quality assurance	Number of instances of quality assurance documentation being out of date or incorrect		
11.	Accuracy of invoices and other claims	Percentage of invoices and other claims under the Contract that have no errors and contain all required information		

Key Performance Indicator (KPIs)		Measure	Target (per Contract)
<b>Value</b>			
12.	Legitimacy of Contractor claims	Percentage of claims for variations, extensions of time, delays costs and other adjustments to the Contract Price accepted by the Principalor upheld following dispute resolution (claims the subject of unresolved dispute resolution not be to counted)	
13.	Cost saving initiatives	Number of tangible cost saving initiatives identified	
<b>Innovation and Continuous Improvement</b>			
14.	Continuous improvement initiatives	Number of value adding initiatives identified to improve process efficiency and maintain best practice	
15.	Performance Reports	Percentage of monthly KPI Performance Reports provided to the Principal by the required date and which contain accurate and complete information	

## Schedule 12 - Terms of Expert Appointment

**THIS AGREEMENT** is made on the date the last party to execute this agreement executes this agreement

**BETWEEN** [Sydney Trains ABN 38 284 779 682 of Level 20, 477 Pitt Street, Sydney NSW 2000] ("Principal")

**AND** [UGL Unipart Rail Services Pty Ltd ABN 49 154 895 940 of Level 10, 40 Miller Street, North Sydney, NSW 2060] ("Contractor")

**AND** [insert name and address] ("Expert")

### Recitals

- A. The Principal and the Contractor (together the **Parties** and each a **Party**) are parties to a contract (the **Contract**) for the provision of certain goods or works.
- B. By written notice dated [to be inserted], the [insert Principal or Contractor as applicable] has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 15 of the Contract (the **Matter**).
- C. Pursuant to clause 15 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

### Operative part

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## 1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
  - (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence do not apply to the determination;
  - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;
  - (v) in making the determination, the Expert may determine that a Party pay the other Party's costs of the expert determination.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

---

## **2. Confidentiality**

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

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## **3. Costs and fees**

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) Subject to any direction as to costs given by the Expert in the Expert's determination, the Parties agree as between themselves that:
  - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

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## **4. Exclusion of liability and indemnity**

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

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## **5. Co-operation of the Parties**

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

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## **6. Governing law**

This Agreement is governed by and is to be construed in accordance with the laws in force in the place stated in Schedule 1.

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## **7. Jurisdiction**

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the in the place stated in Schedule 1.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).



## SCHEDULE 1

1. **The Matter**  
[to be inserted when it comes time for Expert determination]
2. **Governing law - the place**  
[New South Wales]
3. **Jurisdiction - the place**  
[New South Wales]
4. **Place for conferences with Expert (clause 3.1 of Schedule 2)**  
[Sydney, Australia]

## SCHEDULE 2

### Rules for Expert Determination Process

#### 1. Commencement

Except as provided in clause 4.3 of these Rules, the Expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

#### 2. Written submissions

2.1 No later than 14 days after the date this process begins, Party A (ie the Party who gave notice under clause 15.1 of the Contract) must, in addition to any particulars provided by Party A under clause 15.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

2.2 Within 14 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.

2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.

2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

#### 3. Conference

3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in the place nominated in Schedule 1.

3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.

3.4 The Parties:

- (a) may be accompanied at a conference by legal or other advisers; and
- (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

3.5 The conference must be held in private.

3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

#### 4. General

4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.

- 4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:
- (a) with the prior consent of the Parties;
  - (b) as may be required by law; or
  - (c) as may be required in order to enforce the determination of the Expert.

4.3 The Expert must:

- (a) inform the Parties of:
  - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
  - (ii) any interest the Expert has in the matters in dispute; and
  - (iii) any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
- (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise or it is otherwise determined under clause 15 of the Contract, terminate the proceedings.

5. **The determination**

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 20 Business Days after the Expert's acceptance of appointment, the Expert must:

- (a) determine the Matter between the Parties; and
- (b) notify the Parties of that determination.

5.2 The determination of the Expert must meet the requirements of the Contract.

5.3 To the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a party gives a notice of appeal to the other party in accordance with clause 15.12(b) of the Contract.

6. **Costs**

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7. **Modification**

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

## **APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS**

### **Code of Conduct for an Expert**

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

## Schedule 13 Deed of Novation

### Dated the Effective Date

Parties [ ] (Retiring Party)  
[ ] (Continuing Party)  
[ ] (Substitute Party)

### Recitals

- A. The Retiring Party and the Continuing Party are parties to the Contract.
- B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C. The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

### This deed provides

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## 1. Definitions and interpretation

### 1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears, and in this deed:

**Contract** means the agreement between the Retiring Party and the Continuing Party entitled **[insert description]**, and where the agreement is a Standing Offer Deed, includes all the Contracts formed in accordance with the Standing Offer Deed (except for any Contracts that are identified in the Schedule as being excluded).

**Contract Guarantees** means the guarantees (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

**Effective Date** means the date on which the last party to execute this deed executes this deed.

**GST** means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth).

**Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

**Related Entity** means:

- (a) in respect of **[insert party which is Sydney Trains]** any 'public transport agency' (as defined in the Transport Administration Act 1988 (NSW)), the State of NSW, and any entity controlled by any of them; and
- (b) in respect of the other parties, has the meaning ascribed to that term in section 9 of the Corporations Act 2001 (Cth).

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "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;
- (d) 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 an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) 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;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

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## 2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

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## 3. Novation

### 3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

### 3.2 Assumptions of rights and obligations

- (a) The Substitute Party:

- (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
  - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract, in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

### **3.3 Release by Continuing Party**

- (a) The Continuing Party releases the Retiring Party from:
- (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, Claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract.

### **3.4 Release by Retiring Party**

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

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## **4. Insurance**

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party (or, if applicable, the benefit of cover is extended to the Substitute Party) as required by the Contract; and
- (c) the Substitute Party must take the necessary steps to ensure that, for all insurances required to be effected by the Substitute Party under the terms of the Contract, the Continuing Party is named (or, if applicable, the benefit of cover is extended to the Continuing Party) as required by the Contract.

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## **5. Replacement of Guarantees**

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

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## **6. Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

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## **7. Representations and warranties**

### **7.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

### **7.2 Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

### **7.3 Binding obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

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## **8. Duties, Costs and Expenses**

### **8.1 Stamp Duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

### **8.2 Costs**

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.

### **8.3 GST**

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;



- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

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## **9. General**

### **9.1 Governing law**

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

### **9.2 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 in an inconvenient forum, if that venue falls within clause 9.2(a).

### **9.3 Amendments**

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

### **9.4 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 a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

### **9.5 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.

### **9.6 Severance**

If at any time a 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 enforceability under the law of any other jurisdiction of that or any other provision of this deed.

**9.7 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.

**9.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

**Executed** as a deed.

**[insert appropriate execution blocks for each party]**

**Schedule to Novation Deed**

Contracts excluded from definition of Contract: *[[list Contracts, if any]]*


**SCHEDULE 3**

**The Expert's Fees and Disbursements**

*[[to be inserted when it comes time for expert determination]]*

## Schedule 14 Form of payment claim

### Payment Claim

<b>Contract No:</b>	
<b>Payment Claim Date:</b>	
<b>Amount:</b>	
<b>Description:</b>	
<b>Customer:</b>	Sydney Trains ABN 18 804 239 602
<b>Contractor:</b>	UGL Unipart Rail Services Pty Ltd ABN 49 154 895 940
<b>Payment Method:</b>	

This Payment/Progress Claim is issued pursuant to Clause 12.2 of the Contract.

#### Claim Summary:

<b>Value of Work Claimed to Date</b>	<b>Amount Claimed</b>
<b>Total Value of Work Claimed to Date</b>	
Less amount previously paid	
Amount Claimed (ex GST)	
GST @ 10%	
<b>Total Value of this Payment Claim</b>	