

# Project Contract - Standing Offer Deed Contract No.

Sydney Trains  
Principal

UGL Unipart Rail Services Pty Ltd  
Contractor

## Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation.....	2
1.3	No bias against drafting party.....	3
1.4	Novation.....	4
<b>2.</b>	<b>Operation .....</b>	<b>4</b>
2.1	Term .....	4
2.2	No guarantee of work .....	4
2.3	No guarantee of exclusivity .....	4
2.4	No representation .....	4
2.5	Non-reliance .....	5
2.6	Discretion.....	5
2.7	Principal's Representative .....	5
2.8	Policies, Codes and Standards .....	5
<b>3.</b>	<b>Requests for Quotation and Purchase Orders .....</b>	<b>6</b>
3.1	Request for Quotation .....	6
3.2	Quotation .....	6
3.3	Review of Quotations .....	7
3.4	Refusal to provide or amend a Quotation.....	7
3.5	Costs.....	8
3.6	Formation of first Contract.....	8
<b>4.</b>	<b>Formation of individual Contracts .....</b>	<b>8</b>
<b>5.</b>	<b>Security .....</b>	<b>8</b>
5.1	Form of security.....	8
5.2	Replacement Bond .....	9
5.3	Release of Bond .....	10
5.4	Additional Security.....	10
5.5	Interest.....	10
<b>6.</b>	<b>Other requirements .....</b>	<b>11</b>
6.1	KPIs .....	11
6.2	Parent Company Guarantee.....	11
6.3	Deed Poll .....	12
6.4	Insurance .....	12
6.5	Confidentiality.....	12
6.6	Intellectual Property.....	12
<b>7.</b>	<b>Disputes .....</b>	<b>12</b>
<b>8.</b>	<b>Termination or expiry .....</b>	<b>13</b>
8.1	Termination or expiry of this Deed.....	13
8.2	Termination of a Contract.....	13
<b>9.</b>	<b>General provisions.....</b>	<b>14</b>
9.1	Notices .....	14
9.2	Governing Law.....	15
9.3	Counterparts .....	15
9.4	Entire agreement .....	15
9.5	Amendments.....	16
9.6	Waiver.....	16
9.7	Assignment.....	16
9.8	Consents.....	17
9.9	Expense.....	17
9.10	Severance.....	17
9.11	English language .....	17

9.12	No partnership, joint venture or other fiduciary relationship .....	17
9.13	Exchange of information between government agencies .....	17
9.14	Proportionate liability .....	18
9.15	Legal Opinion.....	18
9.16	Prior work.....	18
<b>Annexure A - Key Details for Standing Offer Deed .....</b>		<b>ii</b>
<b>Annexure B - Schedule of Prices .....</b>		<b>iii</b>
<b>Annexure C - Request for Quotation .....</b>		<b>iv</b>
<b>Attachment 3 to the Request for Quotation - Principal Supplied Items .....</b>		<b>ix</b>
<b>Annexure D - KPIs .....</b>		<b>x</b>
<b>Annexure E - Parent Company Guarantee .....</b>		<b>xi</b>
<b>Annexure F - First Purchase Order.....</b>		<b>19</b>
<b>Annexure G - General Conditions.....</b>		<b>20</b>

## Standing Offer Deed

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### Standing Offer Deed made at Sydney on the Commencement Date

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

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

### Background

The Principal and the Contractor have agreed to put in place arrangements by which the Principal can procure works or other activities from the Contractor on a standing offer basis on the terms and conditions of this Deed.

### Agreement

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## 1. Definitions and interpretation

### 1.1 Definitions

In this Deed capitalised terms have the same meaning as in the General Conditions (unless they are assigned a different meaning below) and the following terms have the meaning assigned to them below:

**Bond** means:

- (a) the bond required under clause 11.1(a) of the L3C Agreement;
- (b) any replenishments bond under clause 11.4 of the L3C Agreement;
- (c) any replacement bond under clause 11.1(b) or 11.5 of the L3C Agreement;
- (d) any replacement bond under clauses 5.1(a)(iv) and 5.2; and
- (e) any additional security provided under clause 5.4,

as applicable.

**Commencement Date** means the date on which this Deed has been signed by the last party to sign.

**Contractor's Activities** means all things or tasks which the Contractor is, or may be required to do to comply with its obligations under any Contract.

**Contractor's Representative** means the person so nominated in the Key Details for Standing Offer Deed.

**Deed** means this Standing Offer Deed.

**Expiry Date** means the expiry date set out in the Key Details for Standing Offer Deed.

**General Conditions** means the terms and conditions set out in Annexure G.

**Guarantor** has the meaning given in clause 6.2(a)(ii).



**Key Details for Standing Offer Deed** means the particulars to this Deed in Annexure A.

**Key Performance Indicators** or **KPIs** means the key performance indicators:

- (a) in Schedule 11 to the General Conditions; and
- (b) if any, set out in Annexure D.

**Legal Opinion** means a legal opinion:

- (a) from lawyers to the Guarantor, authorised to practice in the place of incorporation of the Guarantor, stating that the parent company guarantee is binding and enforceable against the Guarantor;
- (b) which states that it may be relied upon by the Principal; and
- (c) in a form reasonably satisfactory to the Principal.

**Principal's Representative** means the person so nominated in the Key Details for Standing Offer Deed or any other person nominated by the Principal from time to time under clause 2.7 to replace that person.

**Purchase Order** means a document titled "Purchase Order" issued by the Principal to the Contractor in accordance with clause 3.3(a)(i).

**Quotation** has the meaning given in clause 3.2(b).

**Request for Quotation** means a Request for Quotation in the form (or substantially in the form) set out in Annexure C.

**Schedule of Prices** means the schedule of rates and prices set out in Annexure B.

**Special Conditions** means the amendments to the General Conditions (if any) set out in a Purchase Order.

**Statement of Work** means the statement of work set out in Attachment 1 to the Request for Quotation.

**Term** has the meaning given in clause 2.1.

## 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 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 a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

- (e) a reference to a document (including the 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 the Deed, and a reference to the Deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Deed, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) 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;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency; and
- (m) to the extent that:
  - (i) any amounts are payable to the Contractor under this Deed or any Contract by reference to hourly or daily rates; and
  - (ii) the Contractor's Personnel is engaged in the relevant Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Contractor will be entitled to payment in respect of such time on a pro rata basis; and
- (n) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

### 1.3 No bias against drafting party

No term or provision of this Deed will be construed against a party on the basis that the Deed or the term in question was put forward or drafted by or on behalf of that party.

## 1.4 Novation

- (a) The Principal may at any time, at its sole discretion, novate this Deed or any Contract to any Authority without the Contractor's consent.
- (b) The Principal may only novate its rights or obligations under this Deed or any Contract to an entity which is not an Authority with the prior written consent of the Contractor.
- (c) If the Principal elects to novate this Deed or any Contract to an Authority in accordance with paragraph (a) or the Contractor approves the Principal novating this Deed or any Contract in accordance with paragraph (b), the Principal will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute and return to the Principal such Deed of Novation within 5 Business Days of receipt of the relevant Deed of Novation.
- (d) If the Contractor fails to properly execute a relevant Deed of Novation within the time period specified in the previous paragraph, then for the purpose of executing the relevant Deed of Novation, the Contractor irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the relevant Deed of Novation and all notices, deeds and documents for that purpose.

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## 2. Operation

### 2.1 Term

- (a) This Deed commences on the Commencement Date and expires on the Expiry Date, unless it is terminated earlier in accordance with this Deed (**Term**).
- (b) Notwithstanding paragraph (a), if after the expiry of the Term the parties purport to enter into a Contract in accordance with the procedures set out in clause 3:
  - (i) a Contract will be formed;
  - (ii) that Contract will be valid and binding on the parties; and
  - (iii) each party must comply with the terms of that Contract.

### 2.2 No guarantee of work

The Principal is not by executing this Deed, bound to engage the Contractor to carry out any works or other activities.

### 2.3 No guarantee of exclusivity

The Principal is not, by executing this Deed, restricted in any way from engaging any person to carry out any works or other activities:

- (a) of any type, including work or supply similar to the works or other activities which may be required of the Contractor; or
- (b) at any location where, or in respect of any project that, the Contractor may be required to perform works or other activities.

### 2.4 No representation

Clauses 2.2 and 2.3 apply even though the Principal may have provided the Contractor with a forecast or estimate of the works or other activities that the Principal may require at any time



and the Contractor acknowledges that any forecasts or estimates do not constitute a representation of the works or other activities the Principal may require in any period.

## 2.5 Non-reliance

Unless stated otherwise in the Special Conditions, the Contractor:

- (a) warrants that it did not in any way rely upon:
  - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
  - (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,for the purposes of entering into the Deed, except to the extent that any such information, data, representation, statement or document forms part of the Deed;
- (b) warrants that it enters into the Deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Deed relying upon the warranties in paragraphs (a) and (b).

## 2.6 Discretion

Subject to any express provision in the Deed to the contrary:

- (a) a provision of the Deed which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Deed.

Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Deed conferring the discretion, power or entitlement.

## 2.7 Principal's Representative

The Principal may by written notice:

- (a) replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment; and
- (b) appoint persons to exercise any of the Principal's Representative's functions under this Deed, and revoke any such appointment.

## 2.8 Policies, Codes and Standards

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with:



- (i) the Code of Conduct;
  - (ii) the Policies, Codes and Standards; and
  - (iii) Schedule 7 to the General Conditions.
- (b) For the purposes of paragraph (a):
- (i) any reference to "NSW government sector employees" or "Sydney Trains employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees; and
  - (ii) any references to "the Contract" in Schedule 7 to the General Conditions are to be read as references to this Deed.

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### **3. Requests for Quotation and Purchase Orders**

#### **3.1 Request for Quotation**

- (a) The Principal may if it wishes the Contractor to submit a Quotation for works or other activities, issue to the Contractor a Request for Quotation.
- (b) Each Request for Quotation issued by the Principal under clause 3.1(a) must specify the details required by:
  - (i) Part 1 of the Request for Quotation that sets out:
    - A. identification details for the Request for Quotation; and
    - B. the time within which the Contractor must provide a response to the Request for Quotation under clause 3.2(a);
  - (ii) Part 2 of the Request for Quotation that sets out the relevant "Key Details" for Schedule 1 to the General Conditions (other than the contract price);
  - (iii) Attachment 1 of the Request for Quotation that sets out the Statement of Work;
  - (iv) Attachment 2 setting out the Special Conditions (if any); and
  - (v) Attachment 3 setting out the Principal Supplied Items (if any).
- (c) The Principal is not required to sign any Request for Quotation or Purchase Order given under or in connection with this Deed.

#### **3.2 Quotation**

- (a) Within the time specified in the Request for Quotation of not less than 10 Business Days, or if no time is specified, within 10 Business Days, the Contractor must:
  - (i) prepare and submit a Quotation in accordance with clause 3.2(b); or
  - (ii) notify the Principal's Representative that the Contractor will not submit a Quotation.
- (b) Where the Contractor wishes to submit a quotation in accordance with clause 3.2(a)(i), the Contractor must return to the Principal's Representative a completed copy of the Request for Quotation by:

- (i) setting out the proposed Contract Price in Part 2 of the Request for Quotation, calculated in accordance with the rates set out in Schedule 20 to the L3C Agreement and the Schedule of Prices;
- (ii) duly completing all remaining relevant particulars in the Request for Quotation; and
- (iii) the Contractor's Representative executing Part 3 of the Request for Quotation,

(Quotation).

### 3.3 Review of Quotations

- (a) After receiving a Quotation from the Contractor under clause 3.2 or 3.3(b)(i), the Principal may by notice in writing:
  - (i) accept the Quotation by issuing a Purchase Order enclosing or attaching the relevant Quotation;
  - (ii) request the Contractor to submit an amended Quotation by providing a notice setting out the aspects of the Quotation which require amendment; or
  - (iii) reject the Quotation.
- (b) If the Principal requests the Contractor to submit an amended Quotation under clause 3.3(a)(ii), the Contractor must, within 5 Business Days:
  - (i) submit an amended Quotation that addresses the issues identified in the Principal's notice under clause 3.3(a)(ii); or
  - (ii) notify the Principal's Representative that the Contractor will not submit an amended Quotation, in which case the Contractor's original Quotation is deemed to be rejected.
- (c) Where the Contractor submits an amended Quotation under clause 3.3(b)(i), this clause 3.3 will reapply.

### 3.4 Refusal to provide or amend a Quotation

If the Contractor notifies the Principal's Representative:

- (a) under clause 3.2(a)(ii), that the Contractor will not submit a Quotation; or
  - (b) under clause 3.3(b)(ii), that the Contractor will not submit an amended Quotation,
- then:
- (c) the Contractor must provide the Principal with detailed reasons why the Contractor will not submit the Quotation or the amended Quotation (as the case may be); and
  - (d) the Contractor must provide the Principal with any further information requested by the Principal's Representative regarding the reasons why the Contractor will not submit the Quotation or the amended Quotation (as the case may be).

### 3.5 Costs

The Contractor is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated by this clause 3 and the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of such costs.

### 3.6 Formation of first Contract

- (a) The Principal and the Contractor are deemed to have entered into a Contract on the Commencement Date as particularised by the terms of the Purchase Order set out in Annexure F, as if that Purchase Order had been issued under clause 3.3(a)(i).
- (b) The Principal and the Contractor must carry out their respective obligations under the Contract formed in accordance with paragraph (a) from the Commencement Date.

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## 4. Formation of individual Contracts

- (a) If the Principal accepts a Quotation by issuing a Purchase Order in accordance with clause 3.3(a)(i) the Principal and the Contractor will be deemed to have entered into a separate binding Contract on the date determined in accordance with clause 4(b).
- (b) The date on which a Contract under clause 4(a) will be deemed to be formed is the date the Contractor is deemed by clause 9.1 to have received notice of the relevant Purchase Order.
- (c) The Principal and the Contractor must carry out their respective obligations under each Contract formed in accordance with clause 4(a) from the date on which the Contract is deemed to be formed under clause 4(b).

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## 5. Security

### 5.1 Form of security

- (a) The parties acknowledge and agree that:
  - (i) the Contractor has provided to the Principal a Bond under the L3C Agreement;
  - (ii) without limiting clause 11 of the L3C Agreement and subject to clause 5.1(a)(iii), the Principal may have recourse to the Bond, and use any proceeds resulting from that recourse, at any time in its absolute discretion where the Principal considers that the:
    - A. Contractor is in breach of any of its obligations under any Contract;
    - B. Principal is entitled to be indemnified in accordance with any Contract;
    - C. Contractor has failed to pay the Principal an amount under any Contract in accordance with such Contract; and
    - D. Principal is entitled to terminate any Contract or has terminated any Contract;
  - (iii) the Bond provided under the L3C Agreement at the Extension Date (as defined in the L3C Agreement) is for a sum of [REDACTED] but for the purposes of this clause 5, the Principal may only have recourse to the



Bond in respect of any or all Contracts for a sum not exceeding the value of [REDACTED] of the Bond.

- (iv) the Contractor must issue to the Principal a new Bond to replace the existing Bond within 10 Business Days of the Commencement Date that is on the same terms and conditions and for the same amount as the Bond provided under the L3C Agreement at the Extension Date (as defined in the L3C Agreement), save for the following changes:

- A. after the words "Contract No. WS53007 - Provision of Rolling Stock Level 3 Maintenance and Logistics Services" the following is added "and Contract No. [insert contract number] - Project Contract Standing Offer Deed"; and
- B. after the words "Contract Number: WS53007" the following is added "and [insert contract number]."

- (b) The Contractor must not take any steps to injunct or otherwise restrain the:

- (i) issuer of a Bond from paying the Principal pursuant to that Bond;
- (ii) Principal from making a demand under a Bond; or
- (iii) Principal from using the proceeds of a Bond,

provided the Principal does not claim more than it is entitled to claim pursuant to clause 5.1(a)(iii).

## 5.2 Replacement Bond

- (a) The parties acknowledge and agree that:

- (i) in accordance with clause 11.2 of the L3C Agreement and subject to the Principal's right to have recourse to the Bond, the Principal must release under the L3C Agreement any Bond held by the Principal on the date 12 months after the expiry of the term of the L3C Agreement provided the Principal has no outstanding claim against the Contractor under any L3C Transaction Document (as defined in the L3C Agreement) or otherwise at law;
- (ii) if the Bond is released under the L3C Agreement and the:
- A. Works under any Contract have not achieved Completion; or
- B. last Defects Liability Period under every Contract has not expired,

the Contractor must, as a condition precedent to the return of the Bond then held in accordance with the L3C Agreement, procure the issue to the Principal of a replacement Bond:

- C. for an amount equal to [REDACTED] of the combined value of the Contract Prices for each Contract formed under this Deed in respect of which all Works have not achieved Completion or all Defect Liability Periods have not expired; and
- D. that complies with the requirements of clause 5.2(b).

- (b) Any replacement Bond must be:



- (i) in a form reasonably approved by the Principal;
- (ii) at all times provided by a bank or insurer acceptable to the Principal with a credit rating of no less than A-(S&P)/A3(Mood's)/A-(Fitch) as at the date of this Deed (or having regard to the availability of equivalent prevailing market credit rating at a future date) with an address for service in Sydney;
- (iii) in favour of the Principal;
- (iv) properly executed;
- (v) unconditional and irrevocable;
- (vi) a continuing liability with an expiry date no earlier than, on or after the date 3 years after the day on which the replacement Bond is provided; and
- (vii) payable at an office of the issuer in Sydney (or such other place as the Principal may approve.

### 5.3 Release of Bond

- (a) Subject to its rights to have recourse to the Bond, the Principal must, without limiting clause 11.2 of the L3C Agreement, release the balance of the Bond then held (including any replacement Bond under clause 5.2(a)(ii)) when:
  - (i) the last Defects Liability Period under every Contract has expired; and
  - (ii) the Contractor has complied with all of its obligations under the Deed and each Contract.
- (b) If the Principal terminates the Deed pursuant to clause 8.1(a) then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it.

### 5.4 Additional Security

- (a) If, at any time during the Term, the value of the Bond represents less than [REDACTED] of the combined value of the Contract Prices (as adjusted) for each Contract formed under this Deed in respect of which:
  - (i) all Works have not achieved Completion or;
  - (ii) the last Defects Liability Period has not expired,

(Combined Contract Value), then the Principal may direct the Contractor to provide additional security so that the amount of the security held by it is equal to [REDACTED] of the Combined Contract Value.
- (b) The Contractor must provide additional security that complies with clause 5.2(b), within 10 Business Days of a direction under clause 5.4(a).

### 5.5 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Bond including the proceeds of any bank guarantee if it is converted into cash; and

- (b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

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## 6. Other requirements

### 6.1 KPIs

- (a) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Deed.
- (b) The Contractor must report to the Principal's Representative at the frequency specified in the Key Details for Standing Offer Deed in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:
  - (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
  - (ii) identifies any non-compliances;
  - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
  - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
  - (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
  - (ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal;
  - (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment; and
  - (iv) where the Principal amends the KPIs pursuant to clause 6.1(c)(iii)6.1, the amended KPIs will only apply to Contracts formed after the Principal's written notification to the Contractor of the amendments to the KPIs.
- (d) The Principal and the Contractor must meet at the times specified in the Key Details for Standing Offer Deed, to monitor and review the Contractor's performance under each Contract and, if required by the Principal, the Contractor's compliance with any action plan.
- (e) Notwithstanding anything contained in this Deed or any Contract any KPI regime agreed will not include any abatements.

### 6.2 Parent Company Guarantee

- (a) If the Contractor is required by the Key Details for Standing Offer Deed to provide a parent company guarantee the Contractor must, on the Commencement Date, provide the Principal's Representative with a parent company guarantee:
  - (i) in the form set out in Annexure E with all particulars completed; and

(ii) duly executed by the person named in the Key Details for Standing Offer Deed (**Guarantor**).

(b) If the Contractor has provided a parent company guarantee in accordance with clause 6.2(a), the Contractor will not be required to provide a parent company guarantee under the General Conditions of any subsequent Contract.

### 6.3 Deed Poll

The Contractor must, within 5 Business Days of the Commencement Date, provide to the Principal an executed deed poll in favour of Transport for NSW, RailCorp and NSW Trains in the form set out in Schedule 8 of the General Conditions.

### 6.4 Insurance

At any time during the Term, the Principal's Representative may request, and the Contractor must provide, copies of certificates of currency, and any other evidence reasonably required by the Principal's Representative, to confirm that the Contractor has in place the insurances required under the General Conditions.

### 6.5 Confidentiality

The Contractor must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with any Request for Quotation, Purchase Order, Contractor's Activities or this Deed to any person other than:

- (a) as necessary to perform the Contractor's Activities;
- (b) with respect to any matter already within the public domain; or
- (c) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange); and
- (d) UGL Rail Services Pty Ltd (ACN 000 003 136); UGL Pty Limited (ABN 85 009 180 287), Unipart Rail Limited Company No. 3038418 and CIMIC Group Limited (ACN 004 482 982) only for the purposes of corporate governance or for the purposes of clause 6.5 (a).

The Contractor must not disclose any information concerning this Deed for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning this Deed.

### 6.6 Intellectual Property

Title, ownership and licencing of Intellectual Property is addressed in clause 6.5 and Schedule 5 of any Contract.

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## 7. Disputes

- (a) If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with this Deed, or either party's conduct before the Deed, the dispute or difference must be determined in accordance with the procedure in this clause 7.
- (b) Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:



- (i) the dispute or difference;
  - (ii) particulars of the party's reasons for being dissatisfied; and
  - (iii) the position which the party believes is correct.
- (c) The Principal's Representative and the Contractor (or their nominees) must, within 10 Business Days of a notice being given under clause 7(b), meet and discuss the dispute or difference.
- (d) Whether or not discussions have taken place under clause 7(c), if it is not resolved within 20 Business Days after a notice is given under clause 7(b), the dispute or difference must be referred to senior executives of each party (as nominated by each party) who must:
- (i) meet and discuss the dispute or difference; and
  - (ii) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.
- (e) If the senior executives of each party have not resolved the dispute or difference or agreed on an alternative process for resolving the dispute or difference within 25 Business Days after a notice is given under clause 7(b) (or such longer period as the parties may agree), either party may commence court proceedings in respect of the dispute or difference.
- (f) Despite the existence of a dispute or difference between the parties, the Contractor must continue to perform its obligations under this Deed.

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## **8. Termination or expiry**

### **8.1 Termination or expiry of this Deed**

- (a) Without prejudice to any of the Principal's other rights, the Principal may at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Deed effective from the time stated in the Principal's notice, or if no such time is stated, at the time the notice is given to the Contractor.
- (b) Subject to clauses 8.1(c) and 8.1(d), the Principal will not be liable upon any Claim arising out of or in connection with any termination of this Deed under clause 8.1(a).
- (c) The Principal and the Contractor agree that if this Deed is terminated, discharged (including through expiry of the Term) or becomes frustrated, the separate Contracts formed in accordance with clause 4 of this Deed will not be affected and must be fulfilled in accordance with the terms of the relevant Contract, unless the parties otherwise agree in writing.
- (d) Termination of this Deed will not prevent either party from relying on rights accrued under the Deed prior to such termination.

### **8.2 Termination of a Contract**

The Principal and the Contractor agree that the termination, discharge or frustration of any Contract will not affect the operation of this Deed or the operation of any other Contract.



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## 9. General provisions

### 9.1 Notices

- (a) All communications (including notices, consents, approvals, requests and demands) including:
- (i) any Request for Quotation or Purchase Order issued by the Principal pursuant to clause 3.1 or 3.3; and
  - (ii) any Quotation submitted by the Contractor pursuant to clause 3.2, under or in connection with this Deed:
  - (iii) must be in writing;
  - (iv) subject to clause 3.1(c), must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
  - (v) must be either:
    - A. subject always to clause 9.1(b), delivered or posted by prepaid express post to the address of the Principal's Representative or the Contractor's Representative (as applicable) or such other address as may be notified in writing by a party to the other party;
    - B. if the notice does not relate to a dispute, or a Claim in connection with this Deed, sent by email to the email address of the Principal's Representative or the Contractor's Representative, as a scanned attachment in Adobe PDF format or such other email address as may be notified in writing by a party to the other party; or
    - C. sent by means of the electronic platform notified to the Contractor under clause 9.1(e);
  - (vi) are taken to be received by the addressee:
    - A. (in the case of prepaid express post sent to an address within Australia) on the second Business Day after the date of posting;
    - B. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.1(a)(v); and
    - C. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,
- provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.
- (b) Any notice, consent or other communication under this Deed delivered or sent by prepaid express post will only be effective if it is also sent by email as per clause 9.1(a)(v)B.

- (c) The parties acknowledge and agree that for the purposes of clause 9.1(a)(iv):
  - (i) each party will prepare and provide the other party with a matrix of authorised agents for the purpose of providing notices, consent or other communication under the Deed;
  - (ii) the other party may rely on the accuracy of such matrix for determining the appropriate person to whom notices must be given; and
  - (iii) each party may provide the other party with an updated matrix from time to time.
- (d) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be reasonably specified by the Principal from time to time. As at the Commencement Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (e) The Principal may during the Term direct the Contractor to utilise an electronic platform nominated by the Principal, including TeamBinder.

## 9.2 Governing Law

This Deed is governed by and must be construed according to the Law of the State of New South Wales.

Subject to clause 7, each party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that 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 Counterparts

- (a) 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.
- (b) A party who has executed a counterpart of this Deed may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this Deed executed by it will not affect the validity of this Deed.

## 9.4 Entire agreement

This Deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or

- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the Commencement Date and that are not expressly included in this Deed.

## 9.5 Amendments

This Deed may only be amended by a deed executed by or on behalf of both the Principal and the Contractor.

## 9.6 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.

## 9.7 Assignment

- (a) The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under this Deed to any Authority, or create or allow to exist, a security interest over or in respect of the Deed or any right or interest of the Principal under the Deed.
- (b) The Principal may only assign any right or interest under this Deed to an entity which is not an Authority with the prior written consent of the Contractor.
- (c) Subject to clause 9.7(e), the Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of the Principal.
- (d) If the Principal, in its absolute discretion, approves a novation of this Deed requested by the Contractor, the Contractor must provide the Principal with a duly completed and executed Deed of Novation and the Principal's costs and expenses in connection with negotiating, preparing and executing any Deed of Novation will be a debt due and payable from the Contractor to the Principal.
- (e) The Contractor may assign, transfer or create a security interest over or otherwise deal with any part or all of its rights, title and interest in relation to any payments or amounts payable to the Contractor under this Deed or any Contract, without the consent of any person, for the purpose of a receivables financing facility provided that:
  - (i) the Principal will not be required to:
    - A. liaise or deal with any third parties with respect to any receivables financing facility, including the provision of any confirmation; and
    - B. make payments to any person other than the Contractor itself;
  - (ii) the Principal will not be required to make any administrative changes to its payment processes or otherwise;



- (iii) the Principal will be entitled to require the Contractor to cease the then current receivables financing facility if the Principal directs the Contractor to do so on the basis that a policy of the NSW or Australian government requires the Principal to do so.

## **9.8 Consents**

A consent required under the Deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Deed expressly provides otherwise.

## **9.9 Expense**

Except as otherwise provided in the Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Deed.

## **9.10 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.

## **9.11 English language**

All communications between the parties and all documentation provided in connection with this Deed must be in the English language.

## **9.12 No partnership, joint venture or other fiduciary relationship**

Nothing in this Deed will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

## **9.13 Exchange of information between government agencies**

- (a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and this Deed available to NSW government departments or agencies, including:
  - (i) any information provided by the Contractor to the Principal;
  - (ii) any information relating to the Contractor's performance under this Deed; and
  - (iii) the terms of this Deed.
- (b) The Contractor acknowledges and agrees that:
  - (i) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work;



- (ii) the communication of such information to any NSW government department or agency is a communication falling within section 30 of the Defamation Act 2005 (NSW); and
- (iii) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under this Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

#### **9.14 Proportionate liability**

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
  - (i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

#### **9.15 Legal Opinion**

If the Guarantor is incorporated outside of Australia the Contractor must, on the Commencement Date, provide a Legal Opinion supporting, and in respect of, the execution of the parent company guarantee required by clause 6.2.

#### **9.16 Prior work**

Clause 19.17 of the General Conditions does not apply to any Contractor's Activities undertaken prior to 1 July 2019.

**Executed as a deed**

**Executed** for and on behalf of **Sydney Trains**  
**ABN 38 284 779 682** by its authorised delegate  
in the presence of:



**Executed by UGL Unipart Rail Services Pty**  
**Ltd ABN 49 154 895 940** in accordance with  
section 127 of the Corporations Act 2001 (Cth):



### Annexure A - Key Details for Standing Offer Deed

Clause 1 - Definitions and interpretation	
1. <b>Contractor's Representative:</b> (Clause 1.1)	Name: [insert] Address: [insert] Email: [insert]
2. <b>Principal's Representative:</b> (Clause 1.1)	Mr Jason Kelly Address : 36-46 George Street Burwood 2134 Email: <a href="mailto:Jason.Kelly@transport.nsw.gov.au">Jason.Kelly@transport.nsw.gov.au</a>
3. <b>Expiry Date</b> (Clause 1.1)	31 December 2023
4. <b>Frequency of KPI reporting and times at which Principal and Contractor to meet:</b> (Clause 6.1)	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.
5. <b>Is a parent company guarantee required?:</b> (Clause 6.2)	Yes It must be provided by: UGL Pty Limited ABN 85 009 180 287 and Unipart Rail Limited Company No. 3038418



## Annexure B - Schedule of Prices

### Labour component

The labour component of the proposed Contract Price will be calculated in accordance with:

- (a) the rates set out in Schedule 20 to the L3C Agreement; and
- (b) to the extent the rates in Schedule 20 to the L3C Agreement are inapplicable, the rates set out in Table 1.

**Table 1: Labour Rates**

Resource Type	Hourly Rate	Daily Rate
Project Director		
Software Engineer		
Programmer / Planner / Scheduler		
Commercial Manager		
Shift Delivery Manager		
Warehouse Manager		
Asset Manager		
Supply Chain Manager		
Quality Manager		
Contracts Manager		
Operations Manager		
Quality Inspector		

Notes:

1. All labour rates are based on the costs of labour at Base Date 30 June 2012 and will be adjusted in accordance with the indexation principles set out in Schedule 20 of the L3C Agreement.
2. All labour rates are for Business Days and assume 7.6 hours per Business Day.

### Third-party costs component

The third-party costs component of the proposed Contract Price will be calculated in accordance with:

- (a) the rates set out in Schedule 20 to the L3C Agreement; and
- (b) to the extent the rates in Schedule 20 to the L3C Agreement are inapplicable, the third-party invoiced cost plus a mark-up of [REDACTED]

## Annexure C - Request for Quotation

Part 1 of the Request for Quotation - Identification									
<p>This Request for Quotation is issued by the Principal under the Standing Offer Deed between the Principal and the Contractor.</p> <p><b>Contract No:</b> [insert]</p> <p><b>Request for Quotation No:</b> [insert]</p> <p><b>Contractor response required by:</b> [insert]</p>									
Part 2 of the Request for Quotation - Additional Project Details for Schedule 1 (Key Details) in General Conditions									
<p><b>Contract - Other documents forming part of the Contract</b> (Clause 1.1)</p>	<p>[List any other Contract documents]   (If nothing is specified, nil.)</p>								
<p><b>Cars</b> (Clause 1.1)</p>	<p>[Describe Cars on which work is to be carried out under this Contract]</p>								
<p><b>Contract Price:</b> (Clause 1.1)  </p>	<p>[Insert lump sum if applicable, or insert 'Calculated in accordance with Schedule 2'.]  (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 and/or Schedule 2 (as applicable).)</p>								
<p><b>Contractor's Representative:</b> (Clause 1.1)  </p>	<p>Name: [insert] Address: [insert] Email: [insert]  </p>								
<p><b>Date for Completion</b> (Clause 1.1)  </p>	<p>Where there are no Separable Portions, for the Works is: [insert - could be expressed as a period of time after each Car is made available by the Principal]</p> <p>Where there are Separable Portions, for each Separable Portion is:</p> <table border="1"> <thead> <tr> <th>Separable Portion</th> <th>Date for Completion</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert Date for Completion]</td> </tr> <tr> <td>[insert]</td> <td>[insert Date for Completion]</td> </tr> <tr> <td>.....</td> <td> </td> </tr> </tbody> </table>	Separable Portion	Date for Completion	[insert]	[insert Date for Completion]	[insert]	[insert Date for Completion]	.....	
Separable Portion	Date for Completion								
[insert]	[insert Date for Completion]								
[insert]	[insert Date for Completion]								
.....									
<p><b>Defects Liability Period:</b> (Clause 1.1)</p>	<p>[insert] (12 months unless otherwise stated.)</p>								
<p><b>Principal's Representative:</b> (Clause 1.1)  </p>	<p>Name: [insert] Address: [insert] Email: [insert]  </p>								

<b>Separable Portions of the Works</b> (Clause 1.1)	<i>[Describe each Separable Portion of the Works / or insert 'Not applicable']</i>									
<b>Frequency of KPI reporting and times at which Principal and Contractor to meet:</b> (Clause 2.42.4)	<i>[Insert how frequently in months/days the Contractor must produce a KPI Performance Report.]</i>  <i>[Insert how frequently in months/days the Principal and the Contractor must meet to review the Contractor's performance.]</i>  (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.)									
<b>Contractor's key people:</b> (Clause 3.2)	Person ..... ..... .....	Position ..... ..... .....								
<b>Design and Documentation</b> (Clauses 6 and 6A)	Specify if clause 6 or clause 6A applies (clause 6A applies if not otherwise stated).									
<b>Number of copies of Documents (as defined in clause 6.2(a))</b> (Clause 6.2)	..... (2 copies if not otherwise stated).									
<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).									
<b>Existing Approvals and other Approvals which the Principal is to obtain:</b> (Clause 8.3(b))	<i>[Insert any other Approvals that will be obtained by the Principal e.g. a planning Approval]</i> <i>(If nothing stated, none.)</i>									
<b>Pre-approved Subcontractors:</b> (Clause 8.5(b))	<table border="1"> <thead> <tr> <th data-bbox="614 1388 933 1489">Subcontractor</th> <th data-bbox="941 1388 1335 1489">Part of the Contractor's Activities</th> </tr> </thead> <tbody> <tr> <td data-bbox="614 1489 933 1556">[insert]</td> <td data-bbox="941 1489 1335 1556">[insert]</td> </tr> <tr> <td data-bbox="614 1556 933 1624">[insert]</td> <td data-bbox="941 1556 1335 1624">[insert]</td> </tr> <tr> <td data-bbox="614 1624 933 1702"></td> <td data-bbox="941 1624 1335 1702"></td> </tr> </tbody> </table>	Subcontractor	Part of the Contractor's Activities	[insert]	[insert]	[insert]	[insert]			
Subcontractor	Part of the Contractor's Activities									
[insert]	[insert]									
[insert]	[insert]									



<b>Warranties required to be procured by the Contractor from Subcontractors and provided to the Principal:</b> (Clause 8.6)	Warranty required ..... ..... ..... ..... <i>[Insert description of types of equipment or trades from whom subcontractor warranties are required]</i>								
<b>ASA Authorisation:</b> (Clause 8.9 and Clause 1.12 of Schedule 4 of the L3C Agreement)	<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> (If nothing is stated, the Principal is the AEO and the Principal's ASA Authorisation applies.)								
<b>Provisional Sum Work:</b> (Clauses 1.1 and 8.13)	<table border="1"> <thead> <tr> <th data-bbox="614 795 981 862">Description of Work</th> <th data-bbox="981 795 1343 862">Allowance in Contract Price</th> </tr> </thead> <tbody> <tr> <td data-bbox="614 862 981 929"><i>[insert]</i></td> <td data-bbox="981 862 1343 929"><i>[\$insert]</i></td> </tr> <tr> <td data-bbox="614 929 981 996"><i>[insert]</i></td> <td data-bbox="981 929 1343 996"><i>[\$insert]</i></td> </tr> <tr> <td data-bbox="614 996 981 1064"><i>[insert]</i></td> <td data-bbox="981 996 1343 1064"><i>[\$insert]</i></td> </tr> </tbody> </table>	Description of Work	Allowance in Contract Price	<i>[insert]</i>	<i>[\$insert]</i>	<i>[insert]</i>	<i>[\$insert]</i>	<i>[insert]</i>	<i>[\$insert]</i>
Description of Work	Allowance in Contract Price								
<i>[insert]</i>	<i>[\$insert]</i>								
<i>[insert]</i>	<i>[\$insert]</i>								
<i>[insert]</i>	<i>[\$insert]</i>								
<b>Cap on delay costs</b> (Clause 10.12)	<i>[\$insert]</i> per day (If nothing is stated, <span style="background-color: black; color: black;">[REDACTED]</span> )								
<b>Liquidated damages payable by Contractor when Date of Completion occurs after Date for Completion:</b> (Clause 13.5)	<i>[\$insert]</i> per day ( <span style="background-color: black; color: black;">[REDACTED]</span> )								
<b>Part 3 of the Request for Quotation - Execution by the Contractor's Representative of original Quotation</b>									
<b>Submitted by the Contractor's Representative:</b>  <i>[Contractor to complete]</i>	<b>Name:</b>  <b>Signature:</b>  <b>Date:</b>								

**Attachment 1 to the Request for Quotation - Statement of Work**

***[Sydney Trains to insert Statement of Work detailing specific requirements for the Works to be provided under the specific Contract.]***

**Attachment 2 to the Request for Quotation - Special Conditions**

*[insert any specific amendments to the General Conditions that may need to apply]*

(If nothing is attached, the General Conditions apply unamended).



### Attachment 3 to the Request for Quotation - Principal Supplied Items

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

## Annexure D - KPIs

***[Sydney Trains to insert any KPIs in addition to those in the Schedule 11 of the General Conditions specific to the project]***

(If nothing is attached, the only KPIs are those specified in Schedule 11 of the General Conditions).

## Annexure E - Parent Company Guarantee



# Parent Company Deed of Guarantee and Indemnity

**Project Contract - Standing Offer Deed Contract No. Sydney Trains**  
ABN 38 284 779 682

**UGL Pty Limited**  
ABN 85 009 180 287

## Contents

<b>1.</b>	<b>Interpretation .....</b>	<b>15</b>
1.1	Definitions .....	15
1.2	Rules for interpreting this deed.....	17
1.3	Contra proferentem .....	18
<b>2.</b>	<b>Guarantee .....</b>	<b>18</b>
2.1	Consideration.....	18
2.2	Obligations guaranteed .....	18
2.3	Consequences of Contractor's defaults.....	18
2.4	Nature of obligations and enforcement .....	19
2.5	Preservation of Guarantor's obligations .....	19
2.6	Continuity.....	21
2.7	Limitations on Guarantor's rights .....	21
2.8	No marshalling.....	21
2.9	Effect of Insolvency Event .....	21
2.10	Principal not liable.....	22
2.11	Effect of other guarantees .....	22
<b>3.</b>	<b>Indemnity .....</b>	<b>22</b>
3.1	Indemnity .....	22
3.2	Application of the indemnity.....	22
3.3	Guarantor's obligations separate and independent.....	23
<b>4.</b>	<b>Substitution .....</b>	<b>23</b>
4.1	Substitution of Contractor .....	23
4.2	Substitution of Guarantor.....	23
4.3	Liability not affected.....	23
<b>5.</b>	<b>Representations and warranties .....</b>	<b>23</b>
5.1	Guarantor's representations and warranties .....	23
5.2	Reliance on representations and warranties .....	24
<b>6.</b>	<b>Default interest .....</b>	<b>24</b>
6.1	Guarantor must pay interest .....	24
6.2	Interest after judgement.....	24
6.3	No double interest.....	25
<b>7.</b>	<b>Notices .....</b>	<b>25</b>
7.1	How to give a notice .....	25
7.2	When a notice is given .....	25
7.3	Address for notices.....	25
<b>8.</b>	<b>GST.....</b>	<b>26</b>
<b>9.</b>	<b>Amendment and assignment.....</b>	<b>26</b>
9.1	Amendment .....	26
9.2	Assignment.....	27
<b>10.</b>	<b>General .....</b>	<b>27</b>
10.1	Governing law.....	27
10.2	Liability for expenses .....	27
10.3	Giving effect to this deed .....	27
10.4	Waiver of rights.....	27
10.5	Operation of this deed .....	28
10.6	Operation of indemnities.....	28
10.7	Consents.....	28
10.8	Counterparts .....	28
10.9	Attorneys.....	28

10.10 Liability.....28



## KEY DETAILS

1      **Date**      The date on which this Guarantee is dated by the last party to sign

2      **Principal**

Name      Sydney Trains

ABN      38 284 779 682

Address      Level 20, 477 Pitt Street, Sydney NSW 2000

Attention      General Counsel

Email      irene.rusak@transport.nsw.gov.au

**Guarantor**

Name      UGL Pty Limited

ABN      85 009 180 287

Address      Level 10, 40 Miller Street, North Sydney NSW 2060

Attention      Company Secretary

Fax      +61 2 9492 8844

Email      [CompanySecretary@ugllimited.com](mailto:CompanySecretary@ugllimited.com)

## RECITALS

- A      The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B      The Guarantor has agreed on the following terms and conditions to guarantee to the Principal the Contractor's performance of its Obligations.
- C      The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

## TERMS

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### 1. Interpretation

#### 1.1 Definitions

The following words have these meanings in this deed:

**Authorisation** means:

- (a)      an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and

- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Authority** means any government or government department, local government, council, government or statutory authority, administrative or judicial body or tribunal, agency, minister, statutory corporation or instrumentality or any person (whether autonomous or not) who is charged with the administration of a law which has a right to give any consent or impose any requirements in respect to the subject matter of the Contract including the Principal and its capacity as a government agency.

**Business Day** means a day other than:

- (a) a Saturday, Sunday or a public holiday in NSW; or
- (b) a day falling within the period:
  - (i) commencing on the Monday before 24 December in any given year; and
  - (ii) ending on the Friday following 1 January in the following year.

**Contract** means each of:

- (b) the Standing Offer Deed dated on or about the date of this Deed between the Principal and the Contractor; and
- (c) each 'Contract' formed under that Standing Offer Deed.

**Contractor** means UGL Unipart Rail Services Pty Ltd ACN 154 895 940.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Insolvency Event** means:

- (a) a person enters a deed of company arrangement with creditors;
- (b) a controller or administrator is appointed over all or any of a person's assets or undertaking;
- (c) an application is made to a court for the winding up of a person and is not stayed within 10 Business Days;
- (d) a winding up order is made in respect of a person;
- (e) a person resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding-up);
- (f) [not used];

- (g) execution is levied against a person by creditors, debenture holders or trustees or under a floating charge by way of writ of execution, garnishee order, freezing order or similar order, attachment or other process against or in relation to any asset of a person; or
- (h) a person is:
  - (i) insolvent within the meaning of section 95A of the Corporations Act; or
  - (ii) taken to fail to comply with a statutory demand in accordance with s459F(1) of the Corporations Act.

**Lease** means the agreement of that name entered into by RailCorp and the Contractor on or about 23 December 2011 (as extended from time to time).

**Material Adverse Effect** means, in respect of a person, a material adverse effect, in the reasonable opinion of the Principal, on:

- (a) its business, property or financial condition; or
- (b) its ability to perform its obligations under this deed.

**Security Interest** means an encumbrance that secures the payment of money or the performance of an obligation, or any other interest or arrangement of any kind that gives a creditor priority over other creditors in relation to any property.

## 1.2 Rules for interpreting this deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply:

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) this deed includes a reference to the schedules;
  - (iii) a clause is a reference to a clause in this deed or, if a reference to a clause states that it is a clause in a Schedule to this deed, to a clause in that Schedule of this deed;
  - (iv) a Schedule is a reference to a schedule to this deed unless that reference states otherwise;
  - (v) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (vi) a party to this deed or to any other deed or agreement includes a permitted substitute or a permitted assign of that party;
  - (vii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (viii) dollars or \$ is to an amount in Australian currency, unless stated otherwise.



- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, any variant of that word has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing. The words "include" and "including" (and any variants of those words) must be read as if followed by the words "without limitation".
- (f) The words "agreement" and "contract" include an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The words "subsidiary" and "holding company" have the same meanings as in the Corporations Act.
- (h) Where the Guarantor may exercise its consent, or provide an opinion, under this deed, the Guarantor must exercise its consent, or form such opinion, reasonably.
- (i) Notwithstanding any other clause, word or phrase that may indicate a contrary intention, each of the parties intend that this document be, and take effect as, a deed.

### **1.3 Contra proferentem**

This deed is not to be interpreted against the interests of a party merely because that party proposed this deed or some provision in it or because that party relies on a provision of this deed to protect itself.

## **2. Guarantee**

### **2.1 Consideration**

The Guarantor acknowledges that it has received valuable consideration for entering into this deed.

### **2.2 Obligations guaranteed**

- (a) The Guarantor guarantees to the Principal the due and punctual:
  - (i) payment by the Contractor of all amounts that are payable by the Contractor to the Principal under the Contract; and
  - (ii) performance by the Contractor of all its obligations under the Contract.

### **2.3 Consequences of Contractor's defaults**

If:

- (a) the Contractor defaults in the:
  - (i) due and punctual payment of any amount payable by it to the Principal under the Contract; or
  - (ii) performance of any of its obligations under the Contract or

then:

- (b) the amount unpaid by the Contractor under the Contract to the Principal is a debt due and payable by the Guarantor to the Principal;
- (c) the Guarantor indemnifies the Principal against all costs, losses, liabilities and expenses (including legal expenses on a full indemnity basis) that the Principal incurs (directly or indirectly) as a result of that default; and
- (d) the amount of the costs, losses, liabilities and expenses contemplated by clause 2.3(c) is a debt due and payable by the Guarantor to the Principal.

## **2.4 Nature of obligations and enforcement**

The Guarantor's obligations in this deed:

- (a) are principal obligations, and not ancillary or collateral to any other right or obligation; and
- (b) may be enforced against the Guarantor by the Principal where:
  - (i) the Principal has given the Contractor a written demand in respect of a claim under the Contract; and
  - (ii) the Contractor has failed to respond to the claim under the Contract to the Principal's reasonable satisfaction within 10 Business Days of the written demand by the Principal.

## **2.5 Preservation of Guarantor's obligations**

The Guarantor's obligations in this deed are absolute, unconditional and irrevocable. The liability of the Guarantor under this deed extends to and is not affected by any circumstance, act or omission which, but for this clause 2.5, might otherwise affect it at law or in equity including:

- (a) the grant of any time, waiver or other indulgence or concession;
- (b) the discharge or release of the Contractor, the Guarantor or any other person;
- (c) any transaction or arrangement that may take place between the Principal and the Contractor, the Guarantor, or any other person;
- (d) the occurrence of an Insolvency Event in relation to the Contractor, the Guarantor or any other person;
- (e) the Principal or any other person dealing or not dealing in any way with any other guarantee, encumbrance, document or agreement;
- (f) the Principal or any other person:
  - (i) enforcing or not enforcing any other guarantee or encumbrance or any right or remedy conferred on it by law or in equity or by any agreement;
  - (ii) not recovering any money owing by the Contractor; or
  - (iii) otherwise failing to monitor compliance with, failing or being slow to enforce, or failing to notify the Guarantor of a breach of, any warranty, undertaking or other obligation of the Contractor or any other person under the Transaction Documents and/or the Direct Deed or any other document;

- (g) any variation (including a variation which increases or extends the Contractor's obligations under the Contract), replacement, extinguishment, unenforceability, failure, loss, abandonment or transfer of any agreement relating to the Contractor's obligations under the Contract;
- (h) the Contractor's obligations under the Contract, or the obligations of the Guarantor or any other person under this deed or any other document or agreement relating to the Contractor's obligations under the Contract or this deed (including any other guarantee or encumbrance) being or becoming illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee for creditors or in bankruptcy;
- (i) the Principal not giving the Guarantor notice of any default by the Contractor or any other person;
- (j) the Principal not disclosing any information to the Guarantor;
- (k) any representation made or information given by the Principal to the Guarantor;
- (l) any change in the legal capacity, rights or obligations of, or other circumstance related to, the Contractor, the Guarantor or any other person;
- (m) any legal limitation, disability, incapacity or other circumstance related to the Contractor, the Guarantor or any other person;
- (n) any invalidity or irregularity in the execution of this deed or any deficiency in the powers of the Contractor or the Guarantor;
- (o) any assignment by the Principal, with or without the knowledge of the Contractor or the Guarantor;
- (p) any obligation of the Contractor or the Guarantor being discharged by operation of law (and not by performance);
- (q) any person who was intended to be bound as a guarantor or surety in relation to the Contractor's obligations under the Contract not becoming bound or ceasing to be bound;
- (r) any laches, acquiescence, delay, act, omission or mistake on the part of, or suffered by, the Principal or any other person, in relation to this deed or any other Guarantee, encumbrance or agreement except to the extent it arises from any fraud or misconduct by the Principal;
- (s) the receipt by the Principal or any other person of any dividend or money after an Insolvency Event in relation to the Contractor, the Guarantor or any other person;
- (t) any judgement or right which the Principal may have or exercise against the Contractor, the Guarantor or any other person;
- (u) the amendment of the constitution, trust deed or other constituent document of the Contractor or the Guarantor;
- (v) if the Contractor or the Guarantor is a member of a partnership, firm, joint venture or association, any change in the structure, membership, name or business of that partnership, firm, joint venture or association;
- (w) if the Contractor or the Guarantor is a trustee of a trust, any breach or variation of the terms of that trust; or
- (x) if the Guarantor is a director or shareholder of the Contractor any change in that directorship or shareholding.



## 2.6 Continuity

This deed is a continuing security, and remains in full force until the later of the date upon which the Contractor's obligations under the Contract have been performed in full despite any transaction or other thing (including a settlement of account or intervening payment).

## 2.7 Limitations on Guarantor's rights

Until the Contractor's obligations under the Contract have been performed in full, the Guarantor may not:

- (a) share in any guarantee, encumbrance or money received or receivable by the Principal in relation to the Contractor's obligations under the Contract, or stand in the place of the Principal in relation to any guarantee, encumbrance or right to receive money;
- (b) take any steps to enforce a right or claim against the Contractor relating to any money paid by the Guarantor to the Principal under this deed;
- (c) have or exercise any rights as surety in competition with the Principal against the Contractor in relation to the Contract;
- (d) receive, claim or have the benefit of any payment (including a payment under a guarantee), distribution or encumbrance from or on account of the Contractor in relation to the Contract;
- (e) [not used]; or
- (f) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which the Principal is a party.

## 2.8 No marshalling

The Principal is not under any obligation to marshal or appropriate in favour of the Guarantor or to exercise, apply, perfect or recover any encumbrance that the Principal holds at any time or any funds or property that the Principal may be entitled to receive or have a claim on.

## 2.9 Effect of Insolvency Event

- (a) [Not used].
- (b) [Not used]:
- (c) If:
  - (i) an Insolvency Event has occurred in relation to the Contractor or the Guarantor: and
  - (ii) an amount paid by the Contractor or the Guarantor (as the case may be) within the preceding six months (**Relevant Payment**) is applied against any of the Contractor's obligations under the Contract; and
  - (iii) a final judgment is given by a court of competent jurisdiction requiring the Principal to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors,

then:



- (iv) the Principal's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
  - (v) the Guarantor must immediately do anything (including the signing of documents) requested by the Principal to restore to the Principal any guarantee or encumbrance to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- (d) Any discharge or release between the Principal and the Guarantor is subject to reinstatement of the Principal's rights under this clause 2.9.

## **2.10 Principal not liable**

The Principal is not liable for any loss suffered by the Guarantor as a direct or indirect result of:

- (a) the Principal's exercise or attempted exercise of, or failure to exercise, any of its rights contained in this deed;
- (b) the Principal failing to monitor compliance with, failing or being slow to enforce, or failing to notify the Guarantor of a breach of, any warranty, undertaking or other obligation of the Contractor or any other person under the Contract or any other document; or
- (c) any release or dealing with any other guarantee or encumbrance (including any prejudice to or loss of the Guarantor's rights of subrogation).

## **2.11 Effect of other guarantees**

The Guarantor acknowledges that:

- (a) the Principal may procure rights of surety from third parties in respect of the Contractor's performance of its obligations under the Contract on substantially the same terms as this deed; and
- (b) any rights of surety (or otherwise) procured from third parties will have no effect on the Guarantor's obligations, or the Principal's ability to enforce those obligations, under this deed.

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## **3. Indemnity**

### **3.1 Indemnity**

For the consideration referred to in clause 2.1, the Guarantor (as primary obligor) must unconditionally indemnify the Principal against, and must pay the Principal on demand the amount of, any loss that the Principal may suffer because the Contractor's obligations (including any amount owing or payable by the Contractor) under the Contract are unenforceable or are not recoverable from the Contractor for any reason.

### **3.2 Application of the indemnity**

The indemnity in clause 3.1 extends to any money that is not recoverable:

- (a) because of any legal limitation, disability or incapacity of or affecting the Contractor or any other person;
- (b) because any transaction relating to that money was void, illegal, voidable or unenforceable;

- (c) whether or not the Principal knew or should have known any of the relevant matters or facts; or
- (d) because of any other fact or circumstance.

### **3.3 Guarantor's obligations separate and independent**

The Guarantor's obligations under clause 2 are separate and independent from its obligations under clause 3.1.

---

## **4. Substitution**

### **4.1 Substitution of Contractor**

If the Principal has given the Contractor a written notice of breach of the Contract by the Contractor and requests the Guarantor remedy that breach under this clause 4, then the Guarantor must, within a reasonable time having regard to the breach (such time not to be less than the relevant cure period under the Contract), perform, or cause to be performed, that obligation in accordance with the Contract.

### **4.2 Substitution of Guarantor**

If the Guarantor fails to comply with its undertaking in clause 4.1, the Principal may engage others to perform the obligation and the costs incurred by the Principal will be a debt due and payable by Guarantor to the Principal.

### **4.3 Liability not affected**

Nothing in this clause 4 will affect the Contractor's liability under the Contract.

---

## **5. Representations and warranties**

### **5.1 Guarantor's representations and warranties**

The Guarantor represents and warrants to the Principal that:

- (a) it is a corporation validly existing under the laws of the place of its incorporation;
- (b) it has the full legal capacity and power to:
  - (i) own its own property and to carry on its business; and
  - (ii) enter into this deed, and to carry out the transactions that this deed contemplates;
- (c) it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and to carry out the transactions that this deed contemplates;
- (d) it holds each Authorisation that is necessary or desirable to:
  - (i) enable it to properly execute this deed and to carry out the transactions that this deed contemplates;
  - (ii) ensure that this deed is legal, valid, binding and admissible in evidence; or
  - (iii) enable it to properly carry on its business as it is now being conducted,

and it is complying with any conditions to which any of the Authorisations is subject;

- (e) this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping and registration;
- (f) neither its execution of this deed nor the carrying out by it of the transactions that this deed contemplates, does or will contravene:
  - (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) any Authorisation;
  - (iii) any agreement binding on it or any of its property; or
  - (iv) its constitution or the powers or duties of its directors;
- (g) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a Material Adverse Effect on it;
- (h) no receiver or receiver and manager or anyone else who (whether or not as agent for the person) is in possession, or has control, of its property to enforce an encumbrance is currently appointed in relation to any of its property of any of its subsidiaries; and
- (i) it is not entering into this deed as trustee of any trust or settlement.


## **5.2 Reliance on representations and warranties**

The Guarantor acknowledges that the Principal has executed this deed and agreed to take part in the transactions that this deed contemplates in reliance on the representations and warranties that are made in this clause 5.

---

## **6. Default interest**

### **6.1 Guarantor must pay interest**

- (a) The Guarantor must pay interest on each amount that is not paid when due from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with clause 6.1(b). This interest is a debt due and payable by the Guarantor to the Principal.
- (b) 
- (c) This clause 6.1 does not affect the Guarantor's obligation to pay each amount under this deed when it is due.

### **6.2 Interest after judgement**

If a liability of the Guarantor becomes merged in a judgement or order, the Guarantor, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgement or order until it is paid in full, at the higher of the rate that applies under the judgement or order and the rate calculated in accordance with clause 6.1.



### 6.3 No double interest

The Guarantor is not required to pay any interest on an amount under this clause 6 where interest is payable on that amount pursuant to the Contract.

---

## 7. Notices

### 7.1 How to give a notice

A notice, consent or other communication under this deed is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it by any director, secretary, attorney or authorised agent, of that party;
- (b) addressed to the party to whom it is to be given; and
- (c) delivered or posted by prepaid express post to that party's address as set out in this deed or such other address as may be notified in writing by a party to the other.

### 7.2 When a notice is given

- (a) A notice, consent or other communication that complies with this clause is regarded as given and received by the addressee:
  - (i) in the case of prepaid express post sent to an address within Australia – on the second Business Day after the date of posting;
  - (ii) in the case of prepaid express post sent to an address in another country – on the fourth Business Day after the date of posting; and
  - (iii) in the case of delivery by hand on the delivery at the address of the addressee as provided in this deed,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

### 7.3 Address for notices

Each party's address and email contact details are as set out below, as the party notifies the other Party or, in the case of the Guarantor, its registered office.

#### Principal

Address: Sydney Trains, Contract Management Office, 1 Manchester Road Auburn, NSW 2144

Email : [L3C.contract.management@transport.nsw.gov.au](mailto:L3C.contract.management@transport.nsw.gov.au)

Attention : Jason Kelly – Sydney Trains Representative.

#### Guarantor

Address: Level 10, 40 Miller Street, North Sydney NSW 2060

Email: [CompanySecretary@ugllimited.com](mailto:CompanySecretary@ugllimited.com)

Attention: Company Secretary



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## 8. GST

- (a) Any reference in this clause 8 to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) The parties agree that any amount referred to in this deed which is relevant in determining a payment to be made by one of the parties to the other is a reference to that amount expressed on a GST exclusive basis (**GST exclusive consideration**), unless indicated otherwise.
- (c) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this deed, the consideration to be provided under this deed for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST exclusive consideration (or its GST exclusive market value if applicable) multiplied by the rate of GST applicable to that supply.
- (d) Provided that the Supplier has issued a tax invoice to the recipient in respect of the Supply (**Recipient**), the Recipient must pay the additional amount payable under clause 8(c) to the Supplier at the same time as the GST exclusive consideration is otherwise required to be provided. If the Supplier has not issued a tax invoice prior to the time the GST exclusive consideration is payable, the Recipient must pay the additional amount under clause 8(c) to the Supplier upon receipt of a tax invoice.
- (e) Where the consideration for a supply is expressed to be GST inclusive, the Supplier must issue a tax invoice to the Recipient before the time at which that consideration is to be provided or at such other time required by this deed.
- (f) To the extent any of the consideration for a supply made under or in connection with this deed is non-monetary, the parties will treat the amount of non-monetary consideration as exclusive of GST. The GST amount payable for the supply is to be paid upon receipt of a tax invoice or at such other time required by this deed.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this deed, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 8(c) or otherwise included in any consideration expressed to be inclusive of GST, the amount of the difference must be paid by, refunded to or credited to the Recipient, as applicable and the Supplier must issue an adjustment note to the Recipient.
- (h) If one of the parties to this deed is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this deed, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 8(c).

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## 9. Amendment and assignment

### 9.1 Amendment

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties.

## 9.2 Assignment

- (a) The Guarantor may only assign, declare a trust over or otherwise deal with its rights under this deed with the prior written consent of the Principal.
- (b) The Principal:
  - (i) may assign, novate or otherwise transfer any of its rights or obligations under this deed to an Authority without the Guarantor's consent; and
  - (ii) may only assign, novate or otherwise transfer any of its rights or obligations under this deed to an entity which is not an Authority with the prior written consent of the Guarantor.

---

## 10. General

### 10.1 Governing law

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed.
- (c) The Guarantor irrevocably waives:
  - (i) any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
  - (ii) any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

### 10.2 Liability for expenses

- (a) Subject to clause 10.2(b), each party must pay its own expenses incurred in negotiating and executing this deed.
- (b) The Guarantor must indemnify the Principal against, and must pay on demand the amount of, any duty that is payable on or in relation to this deed or any instrument contemplated by it.

### 10.3 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this deed.

### 10.4 Waiver of rights

- (a) A right may only be waived in writing, signed by the party giving the waiver, and:
  - (i) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
  - (ii) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again.

- (b) The exercise of a right does not prevent any further exercise of that right or of any other right.

#### **10.5 Operation of this deed**

- (a) This deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

#### **10.6 Operation of indemnities**

- (a) Each indemnity in this deed survives the expiry or termination of this deed.
- (b) The Principal may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.
- (c) Nothing in any indemnity contained in this deed derogates from or limits the right of the Principal to:
  - (i) seek recovery of damages; or
  - (ii) exercise any rights it has at common law.

#### **10.7 Consents**

Where this deed contemplates that the Principal may agree or consent to something (however it is described), the Principal may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this deed expressly contemplates otherwise.

#### **10.8 Counterparts**

This deed may be executed in counterparts.

#### **10.9 Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

#### **10.10 Liability**

- (a) Despite any other provision of this deed, the Guarantor's maximum aggregate liability under this deed will not exceed the Contractor's maximum aggregate liability under the Contract.
- (b) Nothing in this deed is intended to render the Contractor and the Guarantor liable for the same loss twice.



- (c) Payment or performance by one of the Contractor or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment or obligation.
- (d) Where performing obligations of the Contractor under the Contract, the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the Contractor under the Contractor.
- (e) Where performing obligations of the Contractor under the Contractor, the Guarantor will not be required to perform any obligations under the Contract in a manner any different than that required by the Contract had the Guarantor not assumed the Contractor's obligations under the Contract.



**EXECUTION**

**Executed as a deed**

**Executed** for and on behalf of **Sydney Trains**  
**ABN 38 284 779 682** by its authorised delegate  
in the presence of:

\_\_\_\_\_  
Signature of witness

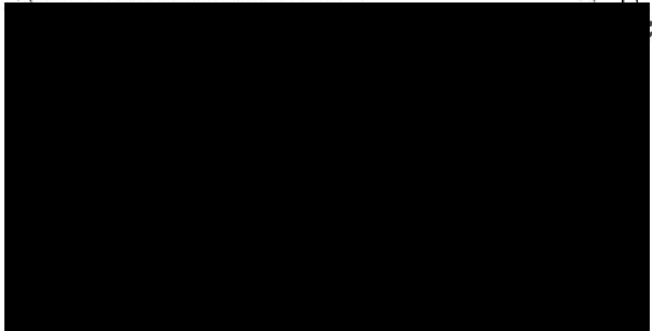
\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised delegate

\_\_\_\_\_  
Date

**Executed by UGL Pty Limited ABN 185 009**  
**180 287** in accordance with section 127 of the  
Corporations Act 2001 (Cth):



\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Parent Company Deed of Guarantee and Indemnity

**Project Contract - Standing Offer Deed**

**Sydney Trains**  
ABN 39 284 779 682

**Unipart Rail Limited**  
Company No. 03038418

## Contents

<b>1.</b>	<b>Interpretation</b> .....	<b>4</b>
1.1	Definitions .....	4
1.2	Rules for interpreting this deed.....	6
1.3	Contra proferentem .....	7
<b>2.</b>	<b>Guarantee</b> .....	<b>7</b>
2.1	Consideration.....	7
2.2	Obligations guaranteed .....	7
2.3	Consequences of Contractor's defaults.....	7
2.4	Nature of obligations and enforcement .....	7
2.5	Preservation of Guarantor's obligations .....	8
2.6	Continuity .....	9
2.7	Limitations on Guarantor's rights .....	9
2.8	No marshalling.....	10
2.9	Effect of Insolvency Event .....	10
2.10	Principal not liable.....	10
2.11	Effect of other guarantees .....	11
<b>3.</b>	<b>Indemnity</b> .....	<b>11</b>
3.1	Indemnity .....	11
3.2	Application of the indemnity.....	11
3.3	Guarantor's obligations separate and independent.....	11
<b>4.</b>	<b>Substitution</b> .....	<b>11</b>
4.1	Substitution of Contractor .....	11
4.2	Substitution of Guarantor.....	12
4.3	Liability not affected .....	12
<b>5.</b>	<b>Representations and warranties</b> .....	<b>12</b>
5.1	Guarantor's representations and warranties .....	12
5.2	Reliance on representations and warranties .....	13
<b>6.</b>	<b>Default interest</b> .....	<b>13</b>
6.1	Guarantor must pay interest.....	13
6.2	Interest after judgement.....	13
6.3	No double interest.....	13
<b>7.</b>	<b>Notices</b> .....	<b>13</b>
7.1	How to give a notice .....	13
7.2	When a notice is given .....	13
7.3	Address for notices .....	14
<b>8.</b>	<b>GST</b> .....	<b>14</b>
<b>9.</b>	<b>Amendment and assignment</b> .....	<b>15</b>
9.1	Amendment .....	15
9.2	Assignment.....	15
<b>10.</b>	<b>General</b> .....	<b>15</b>
10.1	Governing law.....	15
10.2	Liability for expenses .....	16
10.3	Giving effect to this deed .....	16
10.4	Waiver of rights.....	16
10.5	Operation of this deed .....	16
10.6	Operation of indemnities.....	16
10.7	Consents.....	17
10.8	Counterparts .....	17
10.9	Attorneys.....	17

10.10	Liability.....	17
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## KEY DETAILS

1        **Date**        **The date on which this Guarantee is dated by the last party to sign**

2        **Principal**

Name     Sydney Trains

ABN       38 284 779 682

Address   Level 20, 477 Pitt Street, Sydney NSW 2000

Attention   General Counsel

Email      irene.rusak@transport.nsw.gov.au

**Guarantor**

Name      Unipart Rail Limited Company No. 03038418

Address   Unipart House, Cowley, Oxford, OX4 2PG

Attention   Company Secretary

Email      [REDACTED]

## RECITALS

- A        The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B        The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C        The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

## TERMS

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### 1.        **Interpretation**

#### 1.1      **Definitions**

The following words have these meanings in this deed:

**Authorisation** means:

- (a)       an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b)       in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Authority** means any government or government department, local government, council, government or statutory authority, administrative or judicial body or tribunal, agency, minister, statutory corporation or instrumentality or any person (whether autonomous or not) who is charged with the administration of a law which has a right to give any consent or impose any requirements in respect to the subject matter of the Contract including the Principal and its capacity as a government agency.

**Business Day** means a day other than:

- (a) a Saturday, Sunday or a public holiday in NSW; or
- (b) a day falling within the period:
  - (i) commencing on the Monday before 24 December in any given year; and
  - (ii) ending on the Friday following 1 January in the following year.

**Contract** means each of:

- (d) the Standing Offer Deed dated on or about the date of this Deed between the Principal and the Contractor; and
- (e) each 'Contract' formed under that Standing Offer Deed.

**Contractor** means UGL Unipart Rail Services Pty Ltd ACN 154 895 940.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Insolvency Event** means:

- (a) a person enters a deed of company arrangement with creditors;
- (b) a controller or administrator is appointed over all or any of a person's assets or undertaking;
- (c) an application is made to a court for the winding up of a person and is not stayed within 10 Business Days;
- (d) a winding up order is made in respect of a person;
- (e) a person resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding-up);
- (f) [not used];
- (g) execution is levied against a person by creditors, debenture holders or trustees or under a floating charge by way of writ of execution, garnishee order, freezing order or similar order, attachment or other process against or in relation to any asset of a person; or
- (h) a person is:
  - (i) insolvent within the meaning of section 95A of the Corporations Act; or

- (ii) taken to fail to comply with a statutory demand in accordance with s459F(1) of the Corporations Act.

**Lease** means the agreement of that name entered into by RailCorp and the Contractor on or about 23 December 2011 (as extended from time to time).

**Material Adverse Effect** means, in respect of a person, a material adverse effect, in the reasonable opinion of the Principal, on:

- (a) its business, property or financial condition; or
- (b) its ability to perform its obligations under this deed.

**Security Interest** means an encumbrance that secures the payment of money or the performance of an obligation, or any other interest or arrangement of any kind that gives a creditor priority over other creditors in relation to any property.

## 1.2 Rules for interpreting this deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply:

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) this deed includes a reference to the schedules;
  - (iii) a clause is a reference to a clause in this deed or, if a reference to a clause states that it is a clause in a Schedule to this deed, to a clause in that Schedule of this deed;
  - (iv) a Schedule is a reference to a schedule to this deed unless that reference states otherwise;
  - (v) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (vi) a party to this deed or to any other deed or agreement includes a permitted substitute or a permitted assign of that party;
  - (vii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (viii) dollars or \$ is to an amount in Australian currency, unless stated otherwise.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, any variant of that word has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing. The words "include" and "including" (and any variants of those words) must be read as if followed by the words "without limitation".



- (f) The words "agreement" and "contract" include an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The words "subsidiary" and "holding company" have the same meanings as in the Corporations Act.
- (h) Where the Guarantor may exercise its consent, or provide an opinion, under this deed, the Guarantor must exercise its consent, or form such opinion, reasonably.
- (i) Notwithstanding any other clause, word or phrase that may indicate a contrary intention, each of the parties intend that this document be, and take effect as, a deed.

### **1.3 Contra proferentem**

This deed is not to be interpreted against the interests of a party merely because that party proposed this deed or some provision in it or because that party relies on a provision of this deed to protect itself.

## **2. Guarantee**

### **2.1 Consideration**

The Guarantor acknowledges that it has received valuable consideration for entering into this deed.

### **2.2 Obligations guaranteed**

- (a) The Guarantor guarantees to the Principal the due and punctual:
  - (i) payment by the Contractor of all amounts that are payable by the Contractor to the Principal under the Contract; and
  - (ii) performance by the Contractor of all its obligations under the Contract.

### **2.3 Consequences of Contractor's defaults**

If:

- (a) the Contractor defaults in the:
  - (i) due and punctual payment of any amount payable by it to the Principal under the Contract; or
  - (ii) performance of any of its obligations under the Contract; or

then:

- (a) the amount unpaid by the Contractor under the Contract to the Principal is a debt due and payable by the Guarantor to the Principal;
- (b) the Guarantor indemnifies the Principal against all costs, losses, liabilities and expenses (including legal expenses on a full indemnity basis) that the Principal incurs (directly or indirectly) as a result of that default; and
- (c) the amount of the costs, losses, liabilities and expenses contemplated by clause 2.3(b) is a debt due and payable by the Guarantor to the Principal.

### **2.4 Nature of obligations and enforcement**

The Guarantor's obligations in this deed:



- (a) are principal obligations, and not ancillary or collateral to any other right or obligation; and
- (b) may be enforced against the Guarantor by the Principal where:
  - (i) the Principal has given the Contractor a written demand in respect of a claim under the Contract; and
  - (ii) the Contractor has failed to respond to the claim under the Contract to the Principal's reasonable satisfaction within 5 Business Days of the written demand.

## 2.5 Preservation of Guarantor's obligations

The Guarantor's obligations in this deed are absolute, unconditional and irrevocable. The liability of the Guarantor under this deed extends to and is not affected by any circumstance, act or omission which, but for this clause 2.5, might otherwise affect it at law or in equity including:

- (a) the grant of any time, waiver or other indulgence or concession;
- (b) the discharge or release of the Contractor, the Guarantor or any other person;
- (c) any transaction or arrangement that may take place between the Principal and the Contractor, the Guarantor or any other person;
- (d) the occurrence of an Insolvency Event in relation to the Contractor, the Guarantor or any other person;
- (e) the Principal or any other person dealing or not dealing in any way with any other guarantee, encumbrance, document or agreement;
- (f) the Principal or any other person:
  - (i) enforcing or not enforcing any other guarantee or encumbrance or any right or remedy conferred on it by law or in equity or by any agreement;
  - (ii) not recovering any money owing by the Contractor; or
  - (iii) otherwise failing to monitor compliance with, failing or being slow to enforce, or failing to notify the Guarantor of a breach of, any warranty, undertaking or other obligation of the Contractor or any other person under the Contract or any other document;
- (g) any variation (including a variation which increases or extends the Contractor's obligations under the Contract), replacement, extinguishment, unenforceability, failure, loss, abandonment or transfer of any agreement relating to the Contractor's obligations under the Contract (including this deed and any other guarantee or encumbrance held by the Principal from any person at any time);
- (h) the Contractor's obligations under the Contract or the obligations of the Guarantor or any other person under this deed or any other document or agreement relating to the Contractor's obligations under the Contract or this deed (including any other guarantee or encumbrance) being or becoming illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee for creditors or in bankruptcy;
- (i) the Principal not giving the Guarantor notice of any default by the Contractor or any other person;
- (j) the Principal not disclosing any information to the Guarantor;
- (k) any representation made or information given by the Principal to the Guarantor;

- (l) any change in the legal capacity, rights or obligations of, or other circumstance related to, the Contractor, the Guarantor or any other person;
- (m) any legal limitation, disability, incapacity or other circumstance related to the Contractor, the Guarantor or any other person;
- (n) any invalidity or irregularity in the execution of this deed or any deficiency in the powers of the Contractor or the Guarantor;
- (o) any assignment by the Principal, with or without the knowledge of the Contractor or the Guarantor;
- (p) any obligation of the Contractor or the Guarantor being discharged by operation of law (and not by performance);
- (q) any person who was intended to be bound as a guarantor or surety in relation to the Contractor's obligations under the Contract not becoming bound or ceasing to be bound;
- (r) any laches, acquiescence, delay, act, omission or mistake on the part of, or suffered by, the Principal or any other person, in relation to this deed or any other Guarantee, encumbrance or agreement except to the extent it arises from any fraud or misconduct by the Principal;
- (s) the receipt by the Principal or any other person of any dividend or money after an Insolvency Event in relation to the Contractor, the Guarantor or any other person;
- (t) any judgement or right which the Principal may have or exercise against the Contractor, the Guarantor or any other person;
- (u) the amendment of the constitution, trust deed or other constituent document of the Contractor or the Guarantor;
- (v) if the Contractor or the Guarantor is a member of a partnership, firm, joint venture or association, any change in the structure, membership, name or business of that partnership, firm, joint venture or association;
- (w) if the Contractor or the Guarantor is a trustee of a trust, any breach or variation of the terms of that trust; or
- (x) if the Guarantor is a director or shareholder of the Contractor any change in that directorship or shareholding.

## **2.6 Continuity**

This deed is a continuing security, and remains in full force until the Contractor's obligations under the Contract have been performed in full despite any transaction or other thing (including a settlement of account or intervening payment).

## **2.7 Limitations on Guarantor's rights**

Until the Contractor's obligations under the Contract have been performed in full, the Guarantor may not:

- (a) share in any guarantee, encumbrance or money received or receivable by the Principal in relation to the Contractor's obligations under the Contract, or stand in the place of the Principal in relation to any guarantee, encumbrance or right to receive money;
- (b) take any steps to enforce a right or claim against the Contractor relating to any money paid by the Guarantor to the Principal under this deed;

- (c) have or exercise any rights as surety in competition with the Principal against the Contractor in relation to the Contract;
- (d) receive, claim or have the benefit of any payment (including a payment under a guarantee), distribution or encumbrance from or on account of the Contractor in relation to the Contract;
- (e) [not used]; or
- (f) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which the Principal is a party.

## 2.8 No marshalling

The Principal is not under any obligation to marshal or appropriate in favour of the Guarantor or to exercise, apply, perfect or recover any encumbrance that the Principal holds at any time or any funds or property that the Principal may be entitled to receive or have a claim on.

## 2.9 Effect of Insolvency Event

- (a) [Not used].
- (b) [Not used].
- (c) If:
  - (i) an Insolvency Event has occurred in relation to the Contractor or the Guarantor: and
  - (ii) an amount paid by the Contractor or the Guarantor (as the case may be) within the preceding six months (**Relevant Payment**) is applied against any of the Contractor's obligations under the Contract; and
  - (iii) a final judgment is given by a court of competent jurisdiction requiring the Principal to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors,
 then:
  - (iv) the Principal's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
  - (v) the Guarantor must immediately do anything (including the signing of documents) requested by the Principal to restore to the Principal any guarantee or encumbrance to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- (d) Any discharge or release between the Principal and the Guarantor is subject to reinstatement of the Principal's rights under this clause 2.9.

## 2.10 Principal not liable

The Principal is not liable for any loss suffered by the Guarantor as a direct or indirect result of:

- (a) the Principal's exercise or attempted exercise of, or failure to exercise, any of its rights contained in this deed;
- (b) the Principal failing to monitor compliance with, failing or being slow to enforce, or failing to notify the Guarantor of a breach of, any warranty, undertaking or other



obligation of the Contractor or any other person under the Contract or any other document; or

- (c) any release or dealing with any other guarantee or encumbrance (including any prejudice to or loss of the Guarantor's rights of subrogation).

## **2.11 Effect of other guarantees**

The Guarantor acknowledges that:

- (a) the Principal may procure rights of surety from third parties in respect of the Contractor's performance of its obligations under the Contract on substantially the same terms as this deed; and
- (b) any rights of surety (or otherwise) procured from third parties will have no effect on the Guarantor's obligations, or the Principal's ability to enforce those obligations, under this deed.

---

## **3. Indemnity**

### **3.1 Indemnity**

For the consideration referred to in clause 2.1, the Guarantor (as primary obligor) must unconditionally indemnify the Principal against, and must pay the Principal on demand the amount of, any loss that the Principal may suffer because the Contractor's obligations (including any amount owing or payable by the Contractor) under the Contract are unenforceable or are not recoverable from the Contractor for any reason.

### **3.2 Application of the indemnity**

The indemnity in clause 3.1 extends to any money that is not recoverable:

- (a) because of any legal limitation, disability or incapacity of or affecting the Contractor or any other person;
- (b) because any transaction relating to that money was void, illegal, voidable or unenforceable;
- (c) whether or not the Principal knew or should have known any of the relevant matters or facts; or
- (d) because of any other fact or circumstance.

### **3.3 Guarantor's obligations separate and independent**

The Guarantor's obligations under clause 2 are separate and independent from its obligations under clause 3.1.

---

## **4. Substitution**

### **4.1 Substitution of Contractor**

If the Principal has given the Contractor a written notice of breach of the Contract by the Contractor and requests the Guarantor remedy that breach under this clause 4, then the Guarantor must, within a reasonable time having regard to the breach (such time not to be less than the relevant cure period under the Contract), perform, or cause to be performed, that obligation in accordance with the Contract.



## 4.2 Substitution of Guarantor

If the Guarantor fails to comply with its undertaking in clause 4.1, the Principal may engage others to perform the obligation and the costs incurred by the Principal will be a debt due and payable by Guarantor to the Principal.

## 4.3 Liability not affected

Nothing in this clause 4 will affect the Contractor's liability under the Contract.

---

# 5. Representations and warranties

## 5.1 Guarantor's representations and warranties

The Guarantor represents and warrants to the Principal that:

- (a) it is a corporation validly existing under the laws of the place of its incorporation;
- (b) it has the full legal capacity and power to:
  - (i) own its own property and to carry on its business; and
  - (ii) enter into this deed, and to carry out the transactions that this deed contemplates;
- (c) it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and to carry out the transactions that this deed contemplates;
- (d) it holds each Authorisation that is necessary or desirable to:
  - (i) enable it to properly execute this deed and to carry out the transactions that this deed contemplates;
  - (ii) ensure that this deed is legal, valid, binding and admissible in evidence; or
  - (iii) enable it to properly carry on its business as it is now being conducted,and it is complying with any conditions to which any of the Authorisations is subject;
- (e) this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping and registration;
- (f) neither its execution of this deed nor the carrying out by it of the transactions that this deed contemplates, does or will contravene:
  - (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) any Authorisation;
  - (iii) any agreement binding on it or any of its property; or
  - (iv) its constitution or the powers or duties of its directors;
- (g) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a Material Adverse Effect on it;

- (h) no receiver or receiver and manager or anyone else who (whether or not as agent for the person) is in possession, or has control, of its property to enforce an encumbrance is currently appointed in relation to any of its property of any of its subsidiaries; and
- (i) it is not entering into this deed as trustee of any trust or settlement.


## **5.2 Reliance on representations and warranties**

The Guarantor acknowledges that the Principal has executed this deed and agreed to take part in the transactions that this deed contemplates in reliance on the representations and warranties that are made in this clause 5.

---

## **6. Default interest**

### **6.1 Guarantor must pay interest**

- (a) The Guarantor must pay interest on each amount that is not paid when due from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with clause 6.1(b). This interest is a debt due and payable by the Guarantor to the Principal.
- (b) 
- (c) This clause 6.1 does not affect the Guarantor's obligation to pay each amount under this deed when it is due.

### **6.2 Interest after judgement**

If a liability of the Guarantor becomes merged in a judgement or order, the Guarantor, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgement or order until it is paid in full, at the higher of the rate that applies under the judgement or order and the rate calculated in accordance with clause 6.1.

### **6.3 No double interest**

The Guarantor is not required to pay any interest on an amount under this clause 6 where interest is payable on that amount pursuant to the Contract.

---

## **7. Notices**

### **7.1 How to give a notice**

A notice, consent or other communication under this deed is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it by any director, secretary, attorney or authorised agent, of that party;
- (b) addressed to the party to whom it is to be given; and
- (c) delivered or posted by prepaid express post to that party's address as set out in this deed or such other address as may be notified in writing by a party to the other.

### **7.2 When a notice is given**

- (a) A notice, consent or other communication that complies with this clause is regarded as given and received by the addressee:

- (i) in the case of prepaid express post sent to an address within Australia – on the second Business Day after the date of posting;
- (ii) in the case of prepaid express post sent to an address in another country – on the fourth Business Day after the date of posting; and
- (iii) in the case of delivery by hand on the delivery at the address of the addressee as provided in this deed,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

### 7.3 Address for notices

Each party's address and email contact details are as set out below, as the party notifies the other Party or, in the case of the Guarantor, its registered office.

#### Principal

Address: Sydney Trains, Contract Management Office, 1 Manchester Road Auburn, NSW 2144

Email : L3C.contract.management@transport.nsw.gov.au

Attention : Jason Kelly – Sydney Trains Representative.

#### Guarantor

Address: Unipart House, Cowley, Oxford OX4 2PG

Email: [REDACTED]

Attention: Company Secretary

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## 8. GST

- (a) Any reference in this clause 8 to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) The parties agree that any amount referred to in this deed which is relevant in determining a payment to be made by one of the parties to the other is a reference to that amount expressed on a GST exclusive basis (**GST exclusive consideration**), unless indicated otherwise.
- (c) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this deed, the consideration to be provided under this deed for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST exclusive consideration (or its GST exclusive market value if applicable) multiplied by the rate of GST applicable to that supply.
- (d) Provided that the Supplier has issued a tax invoice to the recipient in respect of the Supply (**Recipient**), the Recipient must pay the additional amount payable under clause 8(c) to the Supplier at the same time as the GST exclusive consideration is otherwise required to be provided. If the Supplier has not issued a tax invoice prior to the time the GST exclusive consideration is payable, the Recipient must pay the additional amount under clause 8(c) to the Supplier upon receipt of a tax invoice.



- (e) Where the consideration for a supply is expressed to be GST inclusive, the Supplier must issue a tax invoice to the Recipient before the time at which that consideration is to be provided or at such other time required by this deed.
- (f) To the extent any of the consideration for a supply made under or in connection with this deed is non-monetary, the parties will treat the amount of non-monetary consideration as exclusive of GST. The GST amount payable for the supply is to be paid upon receipt of a tax invoice or at such other time required by this deed.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this deed, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 8(c) or otherwise included in any consideration expressed to be inclusive of GST, the amount of the difference must be paid by, refunded to or credited to the Recipient, as applicable and the Supplier must issue an adjustment note to the Recipient.
- (h) If one of the parties to this deed is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this deed, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 8(c).

---

## **9. Amendment and assignment**

### **9.1 Amendment**

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties.

### **9.2 Assignment**

- (a) The Guarantor may only assign, declare a trust over or otherwise deal with its rights under this deed with the prior written consent of the Principal.
- (b) The Principal:
  - (i) may assign, novate or otherwise transfer any of its rights or obligations under this deed to an Authority without the Guarantor's consent; and
  - (ii) may only assign, novate or otherwise transfer any of its rights or obligations under this deed to an entity which is not an Authority with the prior written consent of the Guarantor.

---

## **10. General**

### **10.1 Governing law**

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed.
- (c) The Guarantor irrevocably waives:
  - (i) any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and



- (ii) any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

## **10.2 Liability for expenses**

- (a) Subject to clause 10.2(b), each party must pay its own expenses incurred in negotiating and executing this deed.
- (b) The Guarantor must indemnify the Principal against, and must pay on demand the amount of, any duty that is payable on or in relation to this deed or any instrument contemplated by it.

## **10.3 Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this deed.

## **10.4 Waiver of rights**

- (a) A right may only be waived in writing, signed by the party giving the waiver, and:
  - (i) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
  - (ii) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again.
- (b) The exercise of a right does not prevent any further exercise of that right or of any other right.

## **10.5 Operation of this deed**

- (a) This deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

## **10.6 Operation of indemnities**

- (a) Each indemnity in this deed survives the expiry or termination of this deed.
- (b) The Principal may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.
- (c) Nothing in any indemnity contained in this deed derogates from or limits the right of the Principal to:
  - (i) seek recovery of damages; or
  - (ii) exercise any rights it has at common law.

## **10.7 Consents**

Where this deed contemplates that the Principal may agree or consent to something (however it is described), the Principal may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this deed expressly contemplates otherwise.

## **10.8 Counterparts**

This deed may be executed in counterparts.

## **10.9 Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

## **10.10 Liability**

- (a) Despite any other provision of this deed, the Guarantor's maximum aggregate liability under this deed will not exceed the Contractor's maximum aggregate liability under the Contract.
- (b) Nothing in this deed is intended to render the Contractor and the Guarantor, liable for the same loss twice.
- (c) Payment or performance by one of the Contractor or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment or obligation.
- (d) Where performing obligations of the Contractor under the Contract, the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the Contractor under the Contract.
- (e) Where performing obligations of the Contractor under the Contract, the Guarantor will not be required to perform any obligations under the Contract in a manner any different than that required by the Contract had the Guarantor not assumed the Contractor's obligations under the Contract.

**EXECUTION**

**Executed as a deed**

**Executed** for and on behalf of **Sydney Trains**  
**ABN 38 284 779 682** by its authorised delegate  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised delegate

\_\_\_\_\_  
Date

**Executed by Unipart Rail Limited:** |

\_\_\_\_\_  
Signature of director |

\_\_\_\_\_  
Signature of company secretary/director |

\_\_\_\_\_  
Full name of director |

\_\_\_\_\_  
Full name of company secretary/director |

\_\_\_\_\_  
Date |

\_\_\_\_\_  
Date |

**Annexure F - First Purchase Order**

**Not Used.**