

Deed of Novation made at Sydney on the Agreement Date

Parties **Transport for NSW (ABN 18 804 239 602)** of 18 Lee Street, Chippendale NSW 2008 ("Retiring Party")

UGL Engineering Pty Limited (ABN 96 096 365 972) of Level 5, 40 Miller Street, North Sydney NSW 2060 ("Continuing Party")

Sydney Trains (ABN 38 284 779 682) of Level 20, 477 Pitt Street, Sydney, NSW 2000 ("Substitute Party")

Recitals

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

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Project Deed have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"Agreement Date" means:

- (a) if counterparts of the deed are not used, the date upon which all parties have signed the deed; or
- (b) if counterparts of the deed are signed, the date upon which the final counterpart is exchanged.

"Collateral Warranty Deed" means the agreement of that name between the Retiring Party, the Continuing Party and the Major Technology Supplier dated 3 January 2010.

"Contracts" means the agreements between the Retiring Party and the Continuing Party described in the Schedule.

"Effective Date" means 1 July 2017.

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

"New Contract" means, in respect of each Contract, the new agreement between the Continuing Party and the Substitute Party which is on the same terms as the Contract and which is referred to in clause 2.1(a), and includes (for the avoidance of doubt) the New Project Deed.

"New Project Deed" means the project deed between the Continuing Party and the Substitute Party which is on the same terms as the Project Deed and which is referred to in clause 2.1(a).

"Novating Agreements" means the Contracts, the Parent Company Guarantee and the Collateral Warranty Deed.

"Parent Company Guarantee" means the agreement of that name between UGL Pty Ltd (ABN 85 009 180 287) (formerly known as UGL Limited) and the Retiring Party, dated 21 December 2009.

"Project Deed" means the contract for the design, supply, installation, testing, commissioning and through life support of a GSM-R digital train radio system on the RailCorp electrified network between RailCorp and the Contractor dated 21 December 2009, as amended.

1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) **"includes"** in any form is not a word of limitation; and

(k) a reference to **"\$"** or **"dollar"** is to Australian currency.

2. Novation

2.1 Novation

In respect of each Contract, from the Effective Date:

- (a) the parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract, except that in clause 1.1 of the New Project Deed the term "Associate" is defined to mean:

"Associate means, in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of that person or that Related Body Corporate and:

(a) in the case of the Contractor, includes the Contractor's Subcontractors, and their respective Associates (but does not include the Principal or any of its Associates);

(b) in the case of the Principal, includes Other Contractors (but does not include the Contractor or its Associates), RailCorp, TfNSW and NSW Trains."

; and

- (b) any reference in the New Contract to the Retiring Party shall, unless the context indicates a contrary intention, be read as a reference to the Substitute Party.

2.2 Assumptions of rights and obligations

- (a) In respect of each Contract, from the Effective Date the Substitute Party:

(i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and

(ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract,

in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.

- (b) In respect of each Contract, from the Effective Date the Continuing Party will comply with the terms of the Contract as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.

2.3 Insurance

From the Effective Date, the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of each Contract, the Substitute Party is named in place of the Retiring Party as required by the relevant New Contract.

2.4 Parent Company Guarantee

The Continuing Party acknowledges and agrees that it must:

- (a) ensure that the Guarantor enters into a deed of novation in the agreed form in respect of the Parent Company Guarantee in favour of the Substitute Party; and
- (b) provide the Substitute Party with the duly executed deed within 20 Business Days of the Agreement Date.

2.5 Collateral Warranty Deed

The Continuing Party acknowledges and agrees that it must:

- (a) ensure that the Major Technology Supplier enters into a deed of novation in the agreed form in respect of the Collateral Warranty Deed in favour of the Substitute Party; and
- (b) provide the Substitute Party with the duly executed deed within 20 Business Days of the Agreement Date.

3. Rights, liabilities, acts or omissions

3.1 Assignment of rights and liabilities

Without limiting clauses 2.1 and 2.2, and to the extent permitted by law, the parties agree that, with effect on and from the Effective Date:

- (a) the Retiring Party assigns to the Substitute Party absolutely all of the Retiring Party's right, title and interest in connection with the Contracts and the Project and the Substitute Party accepts the assignment of absolutely all of the Retiring Party's right, title and interest in connection with the Contracts and the Project; and
- (b) the Substitute Party is entitled to all the rights and benefits conferred on the Retiring Party under or relating to the Contracts and the Project, whether or not such rights and benefits accrue or arise before, on or after the Effective Date.

3.2 Prior Acts or omissions

In respect of each Contract, any act, matter or thing done or omitted to be done in connection with the Contract by, to or in respect of the Retiring Party prior to the Effective Date, is taken to have been done or omitted by, to or in respect of the Substitute Party.

3.3 Unassignable causes of action

The parties acknowledge and agree that:

- (a) there may be causes of action or conduct which may form part of inchoate causes of action which the Retiring Party now has, or at any time in the future may have, and which is not assigned to the Substitute Party under clause 3.1 because those matters are not capable of assignment (**Unassignable Matters**);
- (b) if, but for the execution of this deed, the Retiring Party could have recovered from the Continuing Party damages (other than nominal damages) or other monies in respect of an Unassignable Matter, then the Retiring Party must pay to the Substitute Party an amount equal to the amount that the Retiring Party could have recovered from the Continuing Party but for the execution of this deed;
- (c) the Continuing Party acknowledges and agrees that any amount paid by the Retiring Party to the Substitute Party in accordance with clause 3.3(b) is loss suffered by the

Retiring Party in connection with the relevant Unassignable Matter, and, subject to clause 3.3(d), is recoverable by the Retiring Party from the Continuing Party notwithstanding anything else in this deed;

- (d) any Liability of the Continuing Party pursuant to either of clauses 3.3(b) or 3.3(c) must be determined on the basis that the Continuing Party has available to it any defence, counterclaim or set off that would have been available to it but for the execution of this deed and whether any such defence, counterclaim or set off arises as a matter of fact or law; and
- (e) for the avoidance of doubt, the aggregate Liability of the Continuing Party to the Retiring Party and the Substitute Party, arising out of or in any way in connection with the Contracts and the New Contracts, shall not exceed the Liability the Continuing Party would have had to the Substitute Party had the Minister referred to in section 94(1) of the *Transport Administration Act 1988* (NSW) (TAA) made an order in accordance with section 94(1) of the TAA directing that all assets, rights and liabilities of the Retiring Party in connection with the Contracts are transferred from the Retiring Party to the Substitute Party on and from the Effective Date.

4. Not used

5. Overriding effect

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

6. Representations and warranties

6.1 Authority

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

6.2 Authorisations

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

6.3 Binding obligations

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

7. Costs

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

8. General

8.1 Governing Law

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

8.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

8.3 Amendments

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

8.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

8.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

8.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

8.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

8.8 Assignment

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

Schedule

No.	Document	Counterparties	Brief Description
1	Project Deed	United Group Infrastructure Pty Limited ACN 096 365 972	Design, Supply, Installation, Testing, Commissioning and Through Life Support of a GMS R Digital Train Radio System (DTRS) on the RailCorp Electrified Network Contract CW5901 Project Deed dated 21 December 2009
2	Deed of Amendment	UGL Infrastructure Pty Limited ACN 096 365 972	A Deed of Amendment to the Project Deed dated 26 September 2010
3	Deed of Settlement and Amendment	UGL Infrastructure Pty Limited ACN 096 365 972	A Deed of Settlement & Amendment to Project Deed dated 1 June 2012
4	Deed of Variation	UGL Engineering Pty Limited ACN 096 365 972	A Deed of Variation to the Project Deed dated 19 August 2013
5	Deed of Settlement and Amendment	UGL Engineering Pty Ltd (formerly United Group Infrastructure Pty Ltd) ACN 096 365 972	Deed of Settlement and Amendment to the Project Deed dated 14 June 2016.

EXECUTED as a deed.

EXECUTED for and on behalf of **Transport for NSW (ABN 18 804 239 602)** by its authorised delegate in the presence of:

Sig

Name

17-4-18

Date

Name of witness

EXECUTED by **UGL Engineering Pty Ltd (ABN 86 886 365 870)** with
sect _____ / (Cth):

Sign

Name of Director

7 March 2018

Date

Sign

Name

7 March 2018

Date

EXECUTED for and on behalf of **Sydney Trains (ABN 28 284 770 682)** by its authorised delegate in

Name of authorised delegate

10 April 2018

Date

Name of witness

