

- (b) it has full legal capacity to enter into the L3C Transaction Documents and to do all things which can be reasonably contemplated as being required by the L3C Transaction Documents;
- (c) all necessary action has been, or will be, taken by the L3C Contractor to enter into the L3C Transaction Documents and to render each L3C Transaction Document binding on, and legally enforceable against, the L3C Contractor in accordance with its terms;
- (d) each L3C Transaction Document has been sanctioned by and complies with all necessary authorisations whether required by Law, governmental policy or administrative requirement or by any contract, order or award binding on the L3C Contractor;
- (e) each L3C Transaction Document does not violate any Law or any authorisation held by the L3C Contractor or any contract, order or award binding on the L3C Contractor;
- (f) it is not aware of any act, matter, thing or circumstance by reason of which the L3C Contractor is not able to perform its obligations under each L3C Transaction Document;
- (g) it is not a trustee of any trust and none of the assets of the L3C Contractor used or to be used in undertaking its obligations under any L3C Transaction Document are held on trust for the benefit of any person;
- (h) the obligations under the L3C Transaction Documents will be carried out in a safe, proper, competent and professional manner with due skill, care and attention by appropriately qualified and licensed personnel;
- (i) it will not do or permit to be done anything which might damage the name or reputation of RailCorp or result in RailCorp unreasonably being subjected to adverse public criticism or becoming the subject of any official investigation;
- (j) it will not engage in any conduct that is illegal, defamatory, obscene, false, misleading or deceptive or likely to be mislead or deceive;
- (k) it has not entered into any licence, agreement, arrangement or understanding with any person which conflicts with the obligations of the L3C Contractor under any L3C Transaction Document; and
- (l) any information supplied to RailCorp by the L3C Contractor at any time is true and correct and not misleading in any material particular.

6.3 Conflicts of interest and fair dealing

The L3C Contractor represents and warrants that as at the Execution Date:

- (a) no relationship other than as specified in clause 6.3(b) exists between:
 - (i) on the one hand, the L3C Contractor and any Associate of the L3C Contractor; and

- (ii) on the other hand, any employee or representative of RailCorp; and
- (b) all family, friendship and commercial relationships between the L3C Contractor and any Associate of the L3C Contractor on the one hand, and any employee or representative of RailCorp on the other hand were disclosed in writing by the L3C Contractor to RailCorp prior to the Execution Date.

6.4 Probity warranties

The L3C Contractor represents and warrants that:

- (a) it will act honestly and fairly when carrying out its obligations under the L3C Transaction Documents and when dealing with third parties in relation to the carrying out of the obligations under the L3C Transaction Documents;
- (b) it will be ethical and impartial when carrying out its obligations under the L3C Transaction Documents and when dealing with third parties in relation to the carrying out of the obligations under the L3C Transaction Documents;
- (c) it will act honestly, fairly and impartially in relation to all potential suppliers of goods or services to RailCorp; and
- (d) it has effective systems, policies and procedures to ensure compliance with RailCorp's Statement of Business Ethics (which forms part of RailCorp's Rules and Procedures).

7 L3C Services

7.1 SPTR

The L3C Contractor represents and warrants to RailCorp that subject to clause 7.6(b):

- (a) it has checked, examined and carefully considered the SPTR;
- (b) it has satisfied itself as to the appropriateness, suitability and adequacy of the L3C Services set out in the SPTR to assist RailCorp to achieve the RailCorp L3C Purpose and Strategic Intent;
- (c) it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the SPTR and the other parts of this L3C Agreement;
- (d) the SPTR is proper, adequate and fit for the purpose of enabling the L3C Contractor to provide the L3C Services in accordance with this L3C Agreement; and
- (e) the use of, or reliance on, the SPTR does not affect any of its obligations under this L3C Agreement and the L3C Contractor is not entitled to, and

11.10 Parent Company Guarantee and Indemnity

The L3C Contractor must on or before the Execution Date provide to RailCorp a parent company deed of guarantee and indemnity from each Guarantor in the form attached at Schedule 8 executed by each Guarantor.

12 Laws and Approvals

12.1 Authorities

The L3C Contractor acknowledges and agrees that:

- (a) there are Authorities (other than RailCorp) which may exercise their statutory functions and powers in a manner which may disrupt, interfere with or otherwise affect the L3C Services; and
- (b) subject to any relief to which the L3C Contractor is entitled to under this L3C Agreement, it bears the full risk of all occurrences of the kind referred to in clause 12.1(a) and the L3C Contractor is not entitled to, must not make and RailCorp will not be liable for any Claim against RailCorp arising out of or in any way in connection with such occurrences.

12.2 Compliance with Laws and the RailCorp Rules and Procedures

The L3C Contractor must:

- (a) provide the L3C Services and Private Services; and
- (b) ensure that its Associates provide the L3C Services and Private Services, in accordance with all applicable Laws, Standards and RailCorp Rules and Procedures.

12.3 Approvals

The L3C Contractor must:

- (a) obtain and maintain and ensure that its Associates obtain and maintain, all Approvals required to provide the L3C Services (other than those Approvals which this L3C Agreement expressly states that RailCorp has obtained or requires RailCorp to obtain or maintain); and
- (b) pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements required by any relevant Authority in respect of any Approval which the L3C Contractor must obtain or comply with, and ensure that its Associates do likewise in relation to any Approvals which they must maintain, in connection with the L3C Services.

A = the level the amount under 43.6(e) immediately before RailCorp requires the amount to be adjusted;

B = the Current CPI; and

C = the Previous CPI,

and that amount will be deemed to be adjusted from the date of that notice.

- (g) Upon submission by either party, the Independent Expert may amend the determination to correct:
- (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or manner; or
 - (iv) a defect in form.

43.7 Consolidation of disputes

The L3C Contractor must co-operate with RailCorp regarding the consolidation of proceedings involving other parties relating to similar matters or issues including any dispute involving RailCorp under a L3C Transaction Document.

43.8 Continuance of performance

Notwithstanding the existence of a dispute or difference, both parties will continue to perform their respective obligations under this L3C Agreement.

44 Notices

44.1 How to give a notice

A notice, consent or other communication under this L3C Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it;
- (b) addressed to the party to whom it is to be given; and
- (c) either:
 - (i) subject always to clause 44.1(d), delivered or sent by registered mail (by registered airmail, if the addressee is overseas) to that party's address;
 - (ii) sent by facsimile to that party's facsimile number; or

NSW ICAC EXHIBIT

- (iii) if the notice does not relate to a dispute, or a Claim in connection with this L3C Agreement, sent by email to that party's email address as a scanned attachment in Adobe PDF format.
- (d) Any notice, consent or other communication under this L3C Agreement delivered or sent by registered mail will only be effective if it is also sent by email as per clause 44.1(c)(iii).

44.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia – 3 Business Days after posting; or
 - (ii) to or from a place outside Australia – 7 Business Days after posting;
- (b) if it is sent by facsimile, at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the facsimile machine from which it was sent; and
- (c) if it is delivered or sent by email:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

44.3 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 L3C Contractor, its registered office.

RailCorp

Address: Level 18, 477 Pitt Street, Haymarket, NSW 2000
Facsimile: 02 8922 1460
Email: joe.camilleri@railcorp.nsw.gov.au
Attention: Joe Camilleri, General Manager – Maintenance Contracts & Commercial

L3C Contractor

Address: Locked Bag 4, Silverwater NSW 1811

Facsimile: +61 2 9330 7901
Email: Kevin.McCarthy@ugllimited.com
Attention: Kevin McCarthy

45 General

45.1 Amendment

Except as expressly provided in this L3C Agreement, this L3C Agreement can only be amended, supplemented, replaced or novated by another deed signed by the parties.

45.2 Governing law

- (a) The law in force in New South Wales governs this L3C Agreement.
- (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 L3C Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

45.3 Survival of terms

The parties agree that the following terms (and any other terms of this L3C Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this L3C Agreement:

- (a) clauses 1.2, 1.4, 2.7, 6, 7, 10, 11, 16.1(c), 18, 25.5, 25.6, 27, 28, 29, 30, 34.7, 34.8, 35, 36, 38, 40, 43 and 45.3; and
- (b) any other terms of this L3C Agreement expressed to survive the termination or expiry of this L3C Agreement.

45.4 Liability for expenses

Subject to the terms of this L3C Agreement each party must pay its own expenses incurred in negotiating, executing and registering this L3C Agreement.

45.5 Attorneys

Each person who executes this L3C Agreement 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.

45.6 Giving effect to this L3C Agreement

Each party must do anything (including execute any document), and must ensure that its Associates do anything (including execute any document), that the other party may reasonably require to give full effect to this L3C Agreement.

45.7 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) 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;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

45.8 Consents and Approvals

A consent or approval required under this L3C Agreement from RailCorp may be given or withheld, or may be given subject to any conditions, as RailCorp (in its absolute discretion) thinks fit, unless this L3C Agreement expressly provides otherwise.

45.9 Operation of this L3C Agreement

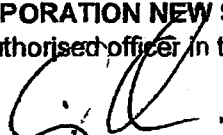
- (a) Except as otherwise expressly specified in this L3C Agreement, this L3C Agreement together with the other L3C Transaction Documents contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this L3C Agreement, and the other L3C Transaction Documents, and has no further effect.
- (b) Any right that a person may have under this L3C Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this L3C Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this L3C Agreement enforceable, unless this would materially change the intended effect of this L3C Agreement.

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EXECUTION

Executed as a deed

EXECUTED for and on behalf of RAIL
CORPORATION NEW SOUTH WALES by
its authorised officer in the presence of



Signature of Witness

JOSEPH CAMICCIONI
Name of Witness (print)



Signature of Authorised Officer

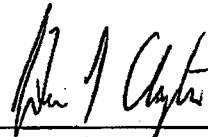
ROBERT MASON
Name of Authorised Officer (print)

SIGNED by UGL Unipart Rail Services
Pty Ltd by:



Signature of director/company secretary

Wayne Nolan
Print name



Signature of director

JOHN CLAYTON
Print name