

**Design and Build
New Outer Suburban Cars**

Contract No.: C03005

**Part A
Deed of Agreement**

Volume 1 of 4

DEED OF AGREEMENT

THIS DEED is made on the 13th day of February 2003

BETWEEN **RAIL CORPORATION OF NEW SOUTH WALES (ABN 59 325 778 353)** of Level 6, 18 Lee Street, Chippendale, New South Wales ("**Principal**")

AND **UNITED GROUP RAIL SERVICES LIMITED (ABN 58 000 003 136)**
(formerly known as United Goninan Limited and, before that, as A Goninan & Co. Limited) of Level 7, 40 Miller Street, North Sydney, New South Wales ("**Contractor**")

RECITALS

- A. The Principal operates railway passenger services and for that purpose requires new rolling stock.
- B. The Contractor has offered to design and build new rolling stock for the Principal in accordance with the Contract, and the Principal has accepted that offer.

OPERATIVE

1. The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the following documents:
- (a) Part A: this Deed of Agreement;
 - (b) for Stage 1 and Stage 2:
 - (i) Part B1: General Conditions of Contract (Stage 1 and Stage 2);
 - (ii) Part C1: Statement of Work (other than Attachments 1 and 4 to the Statement of Work); and
 - (iii) Part D: Technical Specification (other than Appendices B, C, D, F, J, K and N to the Technical Specification); and
 - (c) for Stage 3:
 - (i) Part B2: General Conditions of Contract (Stage 3);
 - (ii) Part C2: Stage 3 Statement of Work (other than Attachments 1 and 4 to the Statement of Work); and
 - (iii) Part D: Stage 3 Technical Specification (other than Appendices B, C, D, F, J, K and N to the Stage 3 Technical Specification), which is to be used for the purposes set out in Clauses 7A.1 and 29.7 of Part B2.
2. For the purpose of the obligations referred to in Clause 1, the Principal and the Contractor acknowledge and agree that:

- (a) the Principal:
 - (i) is a corporation constituted under the *Transport Administration Act 1988* ("**Act**");
 - (ii) has a number of principal objectives under the Act including:
 - (A) the principal objective to deliver safe and reliable railway passenger services in New South Wales in an efficient, effective and financially responsible manner; and
 - (B) other objectives including to:
 - (I) be a successful business and, to this end:
 - (1) operate at least as efficiently as any comparable businesses; and
 - (2) maximise the net worth of the State of New South Wales' investment in the Principal; and
 - (II) exhibit a sense of social responsibility by having regard to the interests of the community in which it operates; and
 - (iii) under the Act must operate railway passenger services in New South Wales;
- (b) this Contract represents a vital stage in the improvement of the efficiency, safety and reliability of railway passenger services in New South Wales;
- (c) the due and proper performance of the Contract by the Contractor will significantly enhance the Principal's business; and
- (d) without limiting any of the foregoing, a core part of the Principal's business is providing railway passenger services in the greater Sydney metropolitan area during the critical periods of 4.00 am to 9.00 am and 2.00 pm to 7.00 pm each Business Day and that disruption and delay to these services inevitably:
 - (i) causes serious inconvenience to the many thousands of commuters who rely upon these peak period services to transport them efficiently and safely to and from their places of employment;
 - (ii) tarnishes the Principal's business reputation as a provider of efficient, safe and reliable railway passenger services; and
 - (iii) damages the Principal's business.

3. The Principal and the Contractor acknowledge and agree that:

- (a) the purpose of the design and building of each Set is the efficient, safe and reliable conveyance of railway passengers on the railway system of New South Wales following Practical Completion;
- (b) the design and building of the Sets must be carried out with due regard for:
 - (i) the safety and comfort of passengers, drivers and other members of the crew; and
 - (ii) the whole of life cost of the Sets;
- (c) the Sets must be designed and built so as to be capable of meeting the requirements of the Contract including passing the Maintainability Demonstration and achieving the Reliability Targets;
- (d) the Technical Specification and Statement of Work set out the minimum requirements for the achievement of the requirements of the Contract as it applies to Stage 1 and Stage 2 and if any of these minimum requirements are inadequate for achieving the requirements of the Contract or there is any uncertainty or ambiguity concerning what is required or the requirements do not address any relevant issue, then the matter must be resolved by the Contractor implementing a solution which ensures that the requirements of the Contract are achieved; and
- (e) the Stage 3 Baseline Technical Documentation and Stage 3 Statement of Work set out requirements for Stage 3.