

Grant for Wheelchair Accessible Taxi Operational Costs Support

**Funding Deed**

between

**Transport for NSW**

ABN 18 804 239 602

and

**[insert Grantee** **name]**

ABN [[insert](https://abr.business.gov.au/ABN/View?abn=86864180944) ABN]

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**Parties**

1. **Transport for NSW** (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney NSW 2000 (**TfNSW**)
2. the **Grantee** described in item 1 of the Key Details below.

**Background**

1. To support people with disabilities and improve wheelchair accessible taxi services in NSW, the NSW Treasury and TfNSW are jointly funding a two-year initiative, including a grant funding program.
2. The grant program has been designed in accordance with the Wheelchair Accessible Taxi Operational Support Grant Program Guidelines (**Program Guidelines**) and will make funding available to eligible recipients to offset a portion of the financial costs of operating an accessible wheelchairs transport service (the **Program**).
3. The Grantee has applied to TfNSW for grant funding under the Program. The application for funding has been successful and the Project will be carried out by the Grantee in accordance with the terms of this Deed, the Program Guidelines and the Grant Administration Guide.
4. This Deed sets out the terms on which the Grantee has agreed to carry out the Project and TfNSW has agreed to provide the Funding.

**Key Details**

|  |  |  |
| --- | --- | --- |
| **Item 1** | **Grantee details** | |
| **Grantee name:** | [insert] |
| **ABN:** | [insert] |
| **Address:** | [insert] |

|  |  |
| --- | --- |
| **Item 2**  (clause 1.1) | **Project** |
| TfNSW will provide the Funding to the Grantee to offset a portion of the financial costs of operating an accessible wheelchairs transport service using Approved WAT Vehicles.  The Grantee must ensure it understands and complies with the Program Guidelines.  **Number of Approved WAT Vehicles:** [insert] |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Funding** | | | | |
| **Item 3**  (clause 1.1) | | **Funding Description** | **Funding amount** | |
| Milestone 1 | $2,500.00 for each Approved WAT Vehicle | |
| Milestone 2 | N/A | |
| **Item 4**  (clause 9) | **Reports** | | |
| **Reports required** | | **Report due** |
| TfNSW may request a report from the Grantee in relation to the Project, the Funding or this Deed from time to time | | The date noted in TfNSW’s written request (acting reasonably) |
|  | | | |
| **Item 5**  (clause 1.1)) | **TfNSW's Representative**  Natalia D'morias, Senior Manager Social Policy, Safety, Policy, Environment & Regulation  [WATgrants@transport.nsw.gov.au](mailto:WATgrants@transport.nsw.gov.au) | | |

|  |  |
| --- | --- |
| **Item 6** | **Grantee Representative**  [insert name and role]  [insert email] |
| (clause 1.1)) |
|  |
|  |  |
| **Item 7** | **Notices** |
| (clause 25) | **TfNSW:**  GPO Box K659, Haymarket NSW 1240 |
|  | [WATgrants@transport.nsw.gov.au](mailto:WATgrants@transport.nsw.gov.au) |
|  | **Grantee:** |
|  | [insert notice delivery address] |
|  | [[insert](mailto:kellie.scholes@muswellbrook.nsw.gov.au) email address] |

Agreed terms

# Definitions and interpretation

### Definitions

In this deed, unless the contrary intention appears:

***Approved WAT Vehicles*** *means the number of wheelchair accessible vehicles approved by TfNSW that the Grantee is receiving Funding for as part of the Project, as set out at item 2 of the Key Details.*

***Approvals*** means all consents, approvals, licences, permits, certifications and other authorisations required by law.

***Business Day*** means any day other than a Saturday, Sunday or public holiday in NSW.

***Commencement Date*** means the date that the last party signs this Deed.

***Completion Date*** means 24 months after the Commencement Date.

***Confidential Information*** of a Party means any information (whether owned by them or not):

* + 1. that is, by its nature, confidential and has been designated by the disclosing party as confidential in the information or document;
    2. that the receiving party knows or ought to know is confidential, including:
       1. where the receiving party is the Grantee:
          1. information relating to the policies, strategies, practices and procedures of TfNSW or the State of New South Wales and any information in the Grantee’s possession relating to the New South Wales public service;
          2. information relating to other contractors of TfNSW; and
          3. security classified information; and
       2. where the receiving party is TfNSW, the financial, corporate and commercial information of the Grantee,

this does not include information that:

* + 1. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
    2. has been independently developed or acquired by the receiving party.

***Deed*** means this deed and any schedules and attachments to this deed.

***Funding*** or ***Funds*** means the total maximum amount to be contributed by TfNSW for a Project specified in item 3 of the Key Details.

***Grantee*** means the party identified in item 1 of the Key Details and includes where relevant the Grantee’s employees, contractors, subcontractors, consultants, subconsultants, agents and representatives*.*

***Grantee Representative*** means the party named in item 6 of the Key Details.

***GST Law*** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

***Intellectual Property Rights*** means all present and future industrial and intellectual property rights conferred by statute, common law or equity and includes copyright, trademarks, patents, designs, circuit layout rights, trade secrets, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields whether non-registrable, registered or patentable.

***Interest*** means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), plus 1%, on a daily compounding basis.

***Key Details*** means the section of this Deed headed “Key Details”.

***Milestone 1*** means the first Milestone listed in Schedule 1.

***Milestone 2*** means the second Milestone listed in Schedule 1.

***Program Guidelines*** means the ‘Wheelchair Accessible Taxi Operational Support Grant Program Guidelines’ located at [<https://www.transport.nsw.gov.au/p2p-accessible-initiatives>] and as amended from time to time.

***Project*** means described in item 2 of the Key Details.

***Records*** means all documents, reports, plans, drawings, computer disks, specifications, data and all other materials in both hard and electronic formats and all copies and extracts of the same.

***TfNSW's Representative*** means the party named in item 5 of the Key Details.

***WHS Legislation*** means:

1. the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
2. all other laws relating to work health and safety which apply in New South Wales.

### Interpretation

In this Deed, unless the context requires otherwise:

* + 1. headings are for convenience only and do not affect the interpretation of this Deed;
    2. a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form and vice versa;
    3. other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
    4. a reference to a clause, section, attachment or party is a reference to a clause or section of, or an attachment or party to this Deed;
    5. a reference to this Deed includes the attachments to this Deed;
    6. a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or

re-enactments of any of them;

* + 1. a reference to any dollar amounts or $ is to Australian currency;
    2. no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Deed or any part; and
    3. anything in this Deed after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included.

# Term and Nature of Deed

### Term

This Deed commences on the Commencement Date and expires on the Completion Date, unless earlier in accordance with this Deed.

### Risk and Cost

* + 1. The Grantee accepts all risks and liabilities associated with the Project, and complying with this Deed, and acknowledge that the operational costs associated with the Project may be more than the Funding provided under this Deed.
    2. TfNSW is not responsible for the provision of any money or resources in excess of the Funding specified for the Project under this Deed.

# Payment

1. Subject to the terms of this Deed being met, TfNSW will pay the Grantee the Funding for the Project:
   1. for an amount not exceeding the amount specified in item 3 of the Key Details; and
   2. upon satisfaction of the relevant Milestone and their corresponding payment requirements, as specified in Schedule 1 to this Deed.
2. Notwithstanding clause 3(a)(ii), TfNSW is not required to pay Funding to the Grantee, where:
   1. TfNSW reasonably determines that the Grantee has not met or is unable to meet the Milestone (including any payment requirements), or the requirements this Deed; or

* 1. the Grantee has not submitted all required supporting documentation to substantiate the claim for Funding.

1. If the Grantee considers that a Milestone has been satisfied, the Grantee must submit to TfNSW all supporting documentation specified in Schedule 1.
2. Subject to the Grantee complying with clauses 3(a) and 3(c):
   1. TfNSW will issue a Recipient Created Tax Invoice in respect of the Supplies in accordance with the requirements for issuing Recipient Created Tax Invoices under the GST Laws;
   2. the Grantee will not issue tax invoices or adjustment notes under the GST Laws in respect of the Supplies; and
   3. the Grantee will notify TfNSW if it ceases to be registered for GST.
3. Within 30 Business Days of receiving a notice from the Grantee under clause 3(c), TfNSW must either:
   1. if satisfied (acting reasonably) that the Milestone and corresponding requirements in Schedule 1 have been met, and subject to clause 3(f), pay the Grantee the Funding for that Milestone; or
   2. if not satisfied (acting reasonably) that the Schedule 1 Milestones and/or documentation requirements have been achieved, notify the Grantee that the Milestone has not been achieved.
4. If the Grantee receives a notice under clause 3(e)(ii), the Grantee may submit a further notice under clause 3(c) and clause 3(e) will apply again.

1. TfNSW may inspect the Project and make other reasonable enquiries (including carrying out an audit at TfNSW’s own cost) to satisfy itself that a Milestone has been achieved. The Grantee must co-operate with TfNSW and facilitate any such inspection and enquiry, including by providing access to site/s and Records, subject to TfNSW providing reasonable notice of such request/s.
2. All expressions used in this clause 3 which are defined in the GST Law have the meanings given to them in the GST Law.

# Project

### Obligations

The Grantee must deliver the Project:

1. in accordance with this Deed and the Program Guidelines;
2. diligently, effectively and to a high professional standard; and
3. in good faith so as to meet all Milestones and timeframes.

# Management of Funding

1. The Funding must be spent by the Grantee solely for the Project and for eligible costs in accordance with this Deed.

1. The Grantee must keep full and accurate financial accounts and Records relating to the Project and the Funding that separately identifies the funds from other projects and from any other income streams (including funding from other programs), to enable expenditure on the Project under this Deed to be verified.
2. This clause 5 survives the expiration or termination of this Deed.

# Repayment of Funding

1. Where TfNSW reasonably determines that Funds have not been properly spent by the Grantee on the Project in accordance with this Deed, then the Funding must be refunded by the Grantee to TfNSW within 30 Business Days of a written notice from TfNSW, unless a repayment plan with a later date has otherwise been approved by TfNSW.

1. Interest is payable on any amount not paid to TfNSW when due and payable under this clause 6.
2. Nothing in this clause 6 affects a party’s right to terminate this Deed or TfNSW’s right to suspend this Deed.

# Intellectual Property Rights

1. All Intellectual Property Rights of the parties existing before the date of this Deed will be retained by the relevant party.
2. Each party hereby grants to the other party a royalty-free, non- exclusive and perpetual licence to use its existing Intellectual Property to the extent necessary to carry out the Project.

# Records, Controls and Inspection

1. Records and accounts maintained for the Project must be retained by the Grantee until at least 7 years after the later of either:

* 1. completion of the Project; or
  2. the last date on which Funds are provided under this Deed.

1. The Grantee must make those Records and accounts available within three (3) weeks for inspection and/or audit as and when reasonably requested by TfNSW, a regulator, any external auditor or advisor or any of their authorised representatives during normal business hours. Copies and extracts of any Records may be taken for these purposes.
2. This clause 8 survives the expiration or termination of this Deed.

# Reporting

At the times specified in item 4 of the Key Details, and at other times when reasonably requested, the Grantee must provide TfNSW with the report/s listed in item 4 of the Key Details.

# Taxes, duties and government charges

1. Subject to clause 10(b), the Grantee must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Deed or the Project.
2. If GST is payable on any supply made under this Deed, for which the consideration is not expressly stated to include GST, the recipient of that supply agrees to pay to the supplier an additional amount equal to the GST at the same time that the consideration for the supply is to be provided. However:
   1. the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note; and
   2. if an adjustment event arises in respect of the supply, the additional amount will be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment.
3. Notwithstanding anything stated to the contrary in this Deed:
   1. the imposition or levy of any taxes, duties and government charges in connection with this Deed or the Project (as stated clause 10(a)); and/or
   2. the liability to pay, or the payment of, any GST (pursuant to clause 10(b)),

will not cause the Funding to exceed the amount of Funding specified for the Project.

1. All expressions used in this clause 10 which are defined in the GST Law have the meanings given to them in the GST Law.

# Termination

1. If the Grantee:
   1. fails to fulfil, or is in breach of this Deed, or causes TfNSW to be in breach of its obligations under the Grant Administration Guidelines, and does not remedy the failure or breach within 15 Business Days of receiving a notice in writing from TfNSW to do so; or
   2. in relation to this Deed, breaches any legislative requirement that it is unable to remedy within 15 Business Days of the breach; or
   3. becomes, threatens, resolves to become or in the reasonable opinion of TfNSW is likely to become subject to any form of insolvency or bankruptcy; or
   4. enters into any composition or arrangement with its creditors; or
   5. in the provision of the Project is guilty of fraud, dishonesty, willful misconduct, criminal conduct or any other serious misconduct, then, in the case of any one or more of these events,

TfNSW may immediately terminate this Deed by giving written notice to the Grantee.

1. Where TfNSW terminates this Deed under clauses 11(a) or 11(d), TfNSW will be entitled to recover from the Grantee any part of the Funds which:
   1. have not been spent or committed for expenditure on the Project in accordance with this Deed and payable by the Grantee as a current liability (written evidence of which must promptly be provided by the Grantee) by the date on which the notice of termination given under clause 11(a) is taken to be received; or
   2. have not, in TfNSW’s reasonable opinion, been expended by the Grantee in accordance with the terms and conditions of this Deed.
2. If the Grantee does not repay to TfNSW the amount referred to in clause 11(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the notice of termination, that period) the Grantee must also pay TfNSW Interest on the outstanding amount. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to TfNSW under this Deed or otherwise at law or in equity, be recoverable by TfNSW as a debt due to TfNSW by the Grantee.
3. TfNSW may terminate this Deed for convenience by giving not less than 60 days’ written notice to the Grantee. If the Grantee is able to demonstrate to TfNSW’s reasonable satisfaction that prior to receiving notice of termination under this clause 11(d) the Grantee has spent or committed Funding for the Project in accordance with this Deed, then TfNSW must reimburse the Grantee for that Funding. The Grantee must take all reasonable steps to mitigate the expenditure referred to in this clause 11(d) and TfNSW will not be required to pay Funding to the extent that the expenditure could have been avoided or reduced by taking such steps. The Grantee must provide TfNSW with evidence reasonably satisfactory to TfNSW with evidence reasonably satisfactory to TfNSW to substantiate any claim under this clause 11(d).
4. Clauses 11(b)) and 11(c) do not limit or exclude any of TfNSW’s other rights, including the right to recover any other amounts from the Grantee on termination of this Deed.

# Acknowledgment and publicity

1. The Grantee must acknowledge that TfNSW contributed the Funding to the Project in each public announcement and publication the Grantee makes that relates to the Project.
2. The Grantee must consult with TfNSW at least 4 weeks prior to each public announcement or publication the Grantee makes about this Deed or the Project to ensure it meets the requirements of TfNSW.
3. TfNSW reserves the right to publicise and report on the Project and the provision of Funding to the Grantee and may do this by referring to the Funding provided to the Grantee for the Project in media releases, public announcements and publications including annual reports.
4. If directed by TfNSW, the Grantee must install signage on or in their vehicle that is visible to their passengers that acknowledges TfNSW’s Funding contribution in relation to the Project. The Grantee must comply with any requirements of TfNSW, with regard to:
5. the sign’s design and wording; and
6. where the sign should be displayed and the duration of the display.

# Compliance with laws and TfNSW policies

1. The Grantee must ensure compliance with all legislative requirements and Approvals and must obtain all Approvals relevant to this Deed and the Project.
2. The Grantee must, in carrying out its obligations under this Deed, comply with any directions from TfNSW in relation to TfNSW’s obligations under the Grant Administration Guidelines, and any of TfNSW’s policies as notified, referred to, or made available by or on behalf of TfNSW to the Grantee in writing from time to time, provided those policies are consistent with the performance of this Deed.
3. The Grantee must comply with and must ensure and procure that all of its employees and contractors comply with, all the requirements of the WHS Legislation and any other requirements relating to work health, safety and rehabilitation management.

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# Dispute resolution

1. Subject to clause 14(c), the parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed until the procedure provided by clause 14(b) has been exhausted.
2. The parties agree that any dispute arising out of or in connection with this Deed will be dealt with as follows:
   1. If a party believes a dispute has arisen between the parties, that party must provide the other party with a written notice setting out the nature and details of the dispute;
   2. If a dispute is notified under clause 14(b)(i), each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to attempt to resolve the dispute.
   3. the parties have 15 Business Days (or such extended time as the parties may agree in writing) from the receipt of the notice referred to in clause 14(b)(i) to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
   4. if:
      1. following the expiry of the 15 Business Days (or such extended time as the parties may agree in writing) referred to in clause 14(b)(iii), there is no resolution of the dispute, or agreement on the submission of the dispute to mediation or some other alternative dispute resolution; or
      2. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 20 Business Days,

then, either party may commence legal proceedings.

1. This clause 14 does not prevent a party from instituting proceedings to enforce payment due or seeking injunctive or urgent declaratory relief.
2. Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their respective obligations in accordance with this Deed.
3. This clause 4 survives the expiration or termination of this Deed.

# Indemnity, Release, and Insurance

### Indemnity and Release

* + 1. To the maximum extent permitted by Law, the Grantee agrees to indemnify and keep indemnified TfNSW and its officers, employees and agents (the **Indemnified**) from and against all actions, proceedings, claims, demands, losses, costs, liabilities and expenses (including the costs of defending or settling any of these) in respect of:
       1. the death or illness of, or injury to, any person;
       2. loss of or damage to any property; or
       3. infringement of a third party’s Intellectual Property Rights arising out of the Grantee’s performance of the Project under this Deed; or
       4. any breach of this Deed by the Grantee, or negligent act or omission by the Grantee (including any failure to comply with any laws) in connection with this Deed or the Project, directly or indirectly caused by, or arising out of or in connection with, the Project, the Funding, this Deed, or any other understanding between the Grantee and TfNSW,

provided that such liability to indemnify TfNSW will be reduced proportionally to the extent that any unlawful or negligent act or omission by TfNSW or the officers, employees or agents of TfNSW contributed to the loss, cost or liability.

* + 1. The indemnity contained in this clause 15.1 is a continuing obligation separate and independent from any of the Grantee’s other obligations or responsibilities and will survive termination or expiration of this Deed.
    2. Nothing in this clause 15.1 will render either party liable for any special, indirect or consequential loss or damage of any kind whatsoever.

### Insurance

* + 1. The Grantee must ensure when carrying out its obligations under this Deed that it exercises the highest level of care and skill so as not to cause loss or damage to the property of, or personal injury or death to, any person.
    2. The Grantee agrees that it has undertaken an assessment of the risks associated with the Project and this Deed and has arranged before the Commencement Date, and will continue to maintain for as long as any obligations remain in connection with this Deed, adequate and appropriate insurance cover to protect:
       1. its physical assets against loss and/or damage;
       2. the Grantee (and where requested by TfNSW, TfNSW) against all legal liability and risk for all personal injury and/or property damage or all other financial loss claims including, without limitation:
          1. public liability, annually for the Duration of the Deed; and
          2. motor vehicle accident liability, annually for the duration of the Deed,

for at least the amounts and on the terms approved (and such approval will not be unreasonably withheld) by TfNSW writing.

* + 1. The Grantee acknowledges that the insurances in this clause 15.2 may not cover all of its risks and that it may effect and maintain such additional insurances as it considers necessary.
    2. This clause 15.2 survives the expiration or termination of this Deed.

# Legal relationship

The Grantee acknowledges that:

1. its employees, officers, volunteers, partners and advisers will not by virtue of this Deed, be or for any purpose deemed to be employees, partners or agents of TfNSW; and
2. it must not purport to represent TfNSW in connection with the carrying out of the Project and it is not empowered to act on behalf of or to bind TfNSW in any way.

# Entire agreement, variation and severance

1. This Deed records the entire agreement between the parties in relation to its subject matter.
2. No variation of this Deed is binding unless it is agreed in writing and signed by the parties.
3. If at any time any provision of this Deed is or becomes illegal, invalid, void or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and contribute to be valid and enforceable.

# Waiver

1. Waiver of any provision of, right under or breach of, this Deed:
   1. must be in writing signed by the party entitled to the benefit of that provision, right or breach; and
   2. is effective only to the extent set out in the written waiver and shall operate as a single waiver only.

# Assignment and novation

1. The Grantee must not assign or novate this Deed, or its rights, obligations and interests under this Deed, without the prior written approval of TfNSW.
2. TfNSW may assign or novate this Deed, or its rights, obligations and interests under this Deed to another NSW Government agency, without the need for obtaining the prior written approval of the Grantee.

# Electronic Execution and Counterparts

A party may execute this Agreement by electronic means. The parties agree and intend that signature by electronic means will bind the party so signing with the same effect as though the signature were an original signature. This Deed may be executed in any number of counterparts which together constitute one Deed.

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# Further assurance

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

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# Applicable law and jurisdiction

1. The laws of New South Wales govern the terms of this Deed.
2. Both parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

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# Confidential Information

1. A party who receives Confidential Information (“**Recipient**”) must not disclose the Confidential Information supplied by the other party (“**Discloser**”) to any person except:
   1. its representatives who require the Confidential Information for the purposes of this Deed; or
   2. to enable the Recipient to obtain professional advice in relation to this Deed; or
   3. with the consent of the Discloser; or if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
   4. if the Recipient is required to do so in connection with legal proceedings relating to this Deed or other agreement between the parties; or
   5. if the Recipient is TfNSW it is disclosed to the Transport Secretary and/or Ministers of the NSW government.
2. If the Recipient discloses the Discloser’s Confidential Information under clause 23(a)(i)or 23(a)(ii) then:
   1. it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 23(a);
   2. the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
   3. the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.
3. The Recipient must not use the Discloser’s Confidential Information except for the purpose of exercising the Recipient’s rights or performing its obligations under this Deed or any other agreement between the parties.
4. On the Discloser’s request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:
   1. the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this Deed or other agreement between the parties; or
   2. the Recipient is otherwise entitled to retain the Confidential Information.
5. Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this Deed to any person other than its Representatives on a confidential basis.

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# Representatives

1. The Grantee must always ensure that it has a nominated representative (who is notified and acceptable to TfNSW acting reasonably) who has full authority to act on behalf of the Grantee. An instruction or direction given to the Grantee Representative will be deemed to be an instruction or direction given to the Grantee.
2. The Grantee must deal with TfNSW's Representative, or such other representative as may be notified by TfNSW to the Grantee from time to time.
3. At the date of this Deed, the representatives of the parties are the nominated contact persons specified in items 5 and 6 of the Key Details.

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# Notices

1. Any notices contemplated by this Deed must be in writing and delivered to the relevant address or email address shown in item 7 of the Key Details (or to any new address or email address that a party notifies to the other).
2. Subject to clause 25(c), a notice given in accordance with clause 25(a) is taken to be received:
   1. if hand delivered, on delivery;
   2. if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier; or
   3. if sent by email, immediately, provided that the sender does not receive a delivery failure or out of office message.
3. A notice received after 5:00 pm, or on a day that is not a Business Day is deemed to be delivered on the next Business Day.

# No fetter

This Deed does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW or the Grantee to exercise any of their functions and powers pursuant to any legislation.

# 

# Survival

Unless otherwise stated in this Deed, any clause capable of continuing to apply after the Project is completed or terminated for any reason will do so.

# EXECUTION

Executed by the parties as a deed.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** for and on behalf of **TfNSW** by its authorised delegate in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of delegate |
|  |  |  |  |
| Full name of witness |  |  | Full name of delegate |
| Date |  |  | Position/title of delegate |
|  |  |  | Date |

□ If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW), and the witness affixed their electronic signature to a counterpart of this document.

□ If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

|  |  |
| --- | --- |
| ***[S 127 OF CORPORATIONS ACT – DIRECTOR AND SECRETARY]***  Executed on behalf ofthe **Grantee** in accordance with section 127 of the Corporations Act 2001(Cth): | |
| Signature of Director | Signature of Director/Secretary |
| Print Name of Director | Print Name of Director/Secretary |
| Date of signature: |  |
|  |  |

***[S 127 OF CORPORATIONS ACT – SOLE DIRECTOR]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Grantee** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
|  |  |  | Signature of sole director |
|  |  |  |  |
|  |  |  | Full name of sole director who states that the **Grantee** does not have a company secretary and they are a sole director of the **Grantee** |
|  |  |  |  |
|  |  |  | Date of Signature |

***[S 127 OF CORPORATIONS ACT – SOLE DIRECTOR AND COMPANY SECRETARY]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Grantee** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
|  |  |  | Signature of sole director who is also sole company secretary |
|  |  |  |  |
|  |  |  | Full name of sole director and sole company secretary who states that they are a sole director and sole company secretary of the **Grantee** |
|  |  |  |  |
|  |  |  | Date of Signature |

|  |  |
| --- | --- |
| ***[SOLE TRADER]***  Executed bythe **Grantee** in the presence of: | |
| Signature of Witness | Signature of Grantee |
| Print Name of Witness | Print Name of Grantee |
| Date of signature: |  |
|  |  |

* If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000, and the witness affixed their electronic signature to a counterpart of this document.
* If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

|  |  |
| --- | --- |
| ***[PARTNERSHIP]***  Executed bythe **Grantee,** being a partnership, in the presence of: | |
| Signature of Witness | Signature of partner |
| Print Name of Witness | Print Name of partner |
| Date of signature: |  |
|  |  |

* If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000, and the witness affixed their electronic signature to a counterpart of this document.
* If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

# Schedule 1 – Milestones

|  |  |  |  |
| --- | --- | --- | --- |
| **MILESTONE** | **% OF FUNDING TO BE PAID** | **MILESTONE DERSCRIPTION** | **MILESTONE REQUIREMENTS** |
| **MILESTONE 1** | 100% | Executed Deed | The following documentation must be provided to TfNSW:   * Validly executed Funding Deed * A completed application form via the SmartyGrants system, submitted within the system specified dates and times, meeting the eligibility criteria as assessed by TfNSW. |
| **MILESTONE 2** | N/A | N/A | * N/A |