

## State Dedicated Driver Facility Licence, [insert]

Transport for NSW on behalf of the State of New South Wales

[insert] (Operator)  
ACN [insert]

## Contents

	<b>Page</b>	
1	Defined terms & interpretation	4
1.1	Defined terms	4
1.2	Services Contract defined terms	5
1.3	Services Contract interpretation clauses	5
2	Licence	6
2.1	Licence of Licensed Area for Term	6
2.2	No exclusive possession	6
2.3	Personal rights only	6
3	Provision relating to the Licensed Area	6
3.1	Licensed Area Risks	6
3.2	Licensed Area Warranties	6
3.3	Notices	6
3.4	Utility Services	6
4	Use and management of Licensed Area	7
4.1	Permitted Use	7
4.2	Compliance with Laws and Licensor's directions	7
4.3	Cleaning	7
4.4	Consumable items	7
4.5	Access and security	7
4.6	Lighting	8
4.7	Signage	8
4.8	Standard	8
4.9	Licensor's reputation	8
4.10	Licensor's representative	8
5	Sublicence and other dealings	8
5.1	Dealing by Licensor	8
5.2	Other transport operators	9

6	Maintenance and repair of Licensed Area	9
7	Licensor owns all Improvements	9
8	Services Contract	9
9	Licence Fee	10
	9.1 Amount and method	10
	9.2 Taxes	10
	9.3 Unconditional payment obligation	10
	9.4 Interest on overdue amounts	10
10	Early surrender	11
11	Termination	11
	11.1 Termination of this licence	11
	11.2 Termination of Services Contract	11
	11.3 Termination by agreement	11
	11.4 Termination for convenience	11
	11.5 Termination by Licensee	11
	11.6 Consequences of termination	11
	11.7 Waiver	12
12	GST	12
	12.1 Interpretation	12
	12.2 Consideration is GST exclusive	12
	12.3 Gross up of consideration	12
	12.4 Reimbursements (net down)	12
	12.5 Tax invoices	12
13	Application of Services Contract Clauses	13
	13.1 Step-in Powers	13
	13.2 Indemnity and Limitation of Liability	13
	13.3 Clauses incorporated	13
	13.4 General amendments	14
14	General	14

14.1	Entire agreement	14
14.2	Amendment	14
14.3	No waiver	14
14.4	Further assurances	14
14.5	Costs	14
14.6	Governing law and jurisdiction	14
14.7	Rights Cumulative	15
14.8	No Merger	15
14.9	Severability	15
	Execution page	16
	Annexure A – Plan of Licensed Area	17

Date: [insert]

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## Parties

- 1 **Transport for NSW, a corporation constituted under *the Transport Administration Act 1988 (NSW)* on behalf of the State of New South Wales** of 231 Elizabeth Street, Sydney, New South Wales (Licensor)
  - 2 [insert] Pty Ltd [insert] of [address] (Licensee)
- 

## Background

- A The Licensee has entered, or will enter, into the Services Contract with the Licensor to operate the Services.
- B The Licensor owns the Licensed Area and is entitled to license the Licensed Area to the Licensee.
- C The Licensee wishes to license the Licensed Area for the purpose of a toilet facility.
- D The Licensor has agreed to license the Licensed Area to the Licensee and the Licensee has agreed to accept the licence of the Licensed Area on the terms and conditions in this licence.

### The parties agree

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## 1 Defined terms & interpretation

### 1.1 Defined terms

In this licence:

**Commencement Date** means [insert].

**Employees** has the meaning of “Operator’s Associates” as that term is defined under the Services Contract.

**Expiry Date** means [insert].

**Improvements** means all fixtures, including buildings and other improvements of whatever nature, items or equipment affixed to the Licensed Area (irrespective of the degree of affixation) and whether by the Licensor or the Licensee.

**Licence Fee** means \$1 (if demanded).

**Licensed Area** means the dedicated driver facility located at [insert], being part of the land contained in certificate of title folio identifier [insert], and includes the Improvements, as identified in the plan set out in Annexure A to this licence, being a Licensed Area under the Services Contract.

**Licensed Area Risks** means all risks in connection with the Licensed Area, including risks relating in any way to:

- (a) the condition of the Licensed Area;
- (b) the fitness for purpose of the Licensed Area, including to discharge the Licensee's obligations under the Services Contract;

- (c) defects in, or damage to, the Licensed Area; and
- (d) the use of the Licensed Area or that the Licensed Area can be put to.

**Licensed Area Warranties** means that the Licensee:

- (a) enters into this licence based entirely and exclusively on its own investigations and decisions and has not relied at all on any act or omission of the Licensor;
- (b) has the skill and resources to comply with its obligations under this licence; and
- (c) ensures that the Licensed Area complies with the standards in the Asset Schedule at all times during the Term.

**Permitted Use** means a toilet facility for use of Drivers and Supervisors (including those of other contracts and regions) in connection with the performance of the Services.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**PPS Security Interest** means a security interest as defined in the PPS Act.

**Security Interest** means:

- (a) any third party rights or interests including a mortgage, bill of sale, charge, lien, pledge, trust, encumbrance, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangement or any arrangement having a similar effect; and
- (b) a PPS Security Interest.

**Services Contract** means the agreement between the Licensor and the Licensee titled 'Greater Sydney Bus Contract [xx]' dated on or about [date] 2023 under which the Licensee agrees to provide the Services in Sydney.

**Term** means [insert] years commencing on the Commencement Date and terminating on the Expiry Date.

**Utility Services** means water, sewerage and drainage supplied to, or consumed in, the Licensed Area.

## 1.2 Services Contract defined terms

Unless the context requires otherwise or the relevant term is defined in this licence, definitions in clause 1.1 of the Services Contract apply to this licence and shall be read with the amendments set out in clause 13.4.

## 1.3 Services Contract interpretation clauses

Unless the context requires otherwise, clauses 1.2 to 1.7 of the Services Contract apply to this licence and shall be read with the amendments set out in clause 13.4.

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## **2 Licence**

### **2.1 Licence of Licensed Area for Term**

The Licensor licenses the Licensed Area to the Licensee for the Term subject to the terms and conditions of the Services Contract and this licence.

### **2.2 No exclusive possession**

- (a) This licence does not confer on the Licensee any right of exclusive possession of any part of the Licensed Area.
- (b) Subject to the terms of the Services Contract, the Licensor may at any time in its absolute discretion exercise all its rights including its right to enter and use the whole or any part of the Licensed Area and undertake any works of a capital and/or structural nature.

### **2.3 Personal rights only**

The rights conferred on the Licensee by this licence are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Area.

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## **3 Provision relating to the Licensed Area**

### **3.1 Licensed Area Risks**

The Licensee accepts the Licensed Area Risks.

### **3.2 Licensed Area Warranties**

- (a) The Licensee gives the Licensed Area Warranties.
- (b) The Licensee must immediately notify the Licensor upon becoming aware that a representation or warranty it has given under this clause has become untrue or misleading at any time during the Term.
- (c) The Licensee acknowledges that the Licensor has entered, or will enter, into this licence in reliance on the Licensed Area Warranties.
- (d) To the maximum extent permitted by law, all warranties and conditions imposed on the Licensor implied by law in respect of the Licensed Area are excluded.

### **3.3 Notices**

A party which receives a notice, order or direction from a Governmental Agency which affects or relates to the Licensed Area or its use must promptly give a copy of that notice, order or direction to the other party.

### **3.4 Utility Services**

The Licensee must:

- (a) pay on time for all Utility Services in relation to the Licensed Area; and

- (b) pay the amount under paragraph (a) directly to the Utility Services provider on time or, at the Licensor's request, to the Licensor in time for the Licensor to make the payment to the Utility Services provider on time.
- 

## **4 Use and management of Licensed Area**

### **4.1 Permitted Use**

- (a) The Licensee must not use the Licensed Area for any purpose other than the Permitted Use.
- (b) The Licensee must:
  - (i) not do anything on the Licensed Area which is noxious or illegal; and
  - (ii) not do or omit to do anything regarding the Licensed Area which does or may annoy, damage, offend or create a nuisance to an occupier, guest or owner of the Licensed Area or adjacent premises and must ensure that no one else does any of those things.

### **4.2 Compliance with Laws and Licensor's directions**

- (a) The Licensee must comply with all applicable Laws, policies and codes about:
  - (i) the Licensed Area or the way the Licensed Area may be used;
  - (ii) additions or improvements to the Licensed Area; and
  - (iii) anything affixed to the Licensed Area or used for the Permitted Use.
- (b) The Licensee must comply with the Licensor's reasonable directions in respect of the Licensed Area.
- (c) The Licensee must carry out work or make any arrangements regarding the Licensed Area or additions or improvements to the Licensed Area which is required by Law or directed by a relevant Governmental Agency.

### **4.3 Cleaning**

The Licensee must at its sole cost and expense:

- (a) ensure that the Licensed Area is properly cleaned at least 3 times a week (or more frequently if and when required);
- (b) store all rubbish in proper containers and have it regularly removed; and
- (c) keep the Licensed Area clear of graffiti.

### **4.4 Consumable items**

The Licensee is responsible for all consumable items required for the proper management, operation and cleanliness of the Licensed Area.

### **4.5 Access and security**

- (a) The Licensee must manage the hours of operation of the Licensed Area, including:
  - (i) locking and unlocking the Licensed Area; and



- (ii) keeping the Licensed Area secure at all times when the Licensed Area is not being used.
- (b) The Licensor may at any time for any reason:
  - (i) close the Licensed Area;
  - (ii) exclude the Licensee and any other person from entering the Licensed Area; and
  - (iii) require the Licensee to exclude any particular person from entering the Licensed Area.

#### **4.6 Lighting**

The Licensee must promptly repair or replace any defective, damaged or broken bulbs, tubes and globes in the Licensed Area.

#### **4.7 Signage**

The Licensee must provide information regarding the access to and use of the Licensed Area to all users of the Licensed Area, including by installing a sign in the Licensed Area which directs users to contact the Licensee if they have any queries, complaints or comments.

#### **4.8 Standard**

The Licensee must manage and maintain the Licensed Area:

- (a) in accordance with Good Industry Practice; and
- (b) to the reasonable satisfaction of the Licensor.

#### **4.9 Licensor's reputation**

The Licensee must not do or omit to do anything which results or may result in damage to the reputation, good name or market perception of the Licensor.

#### **4.10 Licensor's representative**

The Licensee must liaise with the Licensor's representative (as nominated by the Licensor from time to time) in relation to the access to the Licensed Area (including keys), the maintenance of the Licensed Area and all other matters under this licence.

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## **5 Sublicence and other dealings**

### **5.1 Dealing by Licensor**

The Licensor and the Licensee agree that:

- (a) the Licensee has no right to deal with all or any part of its interest in this licence or the Licensed Area (including by way of assignment, sub-lease, licence, trust or the grant of any Security Interest) except to the extent allowed under the Services Contract or required under clause 5.2; and
- (b) the Licensor may assign or transfer its rights or obligations under this licence to another Governmental Agency or as otherwise provided for under the Services Contract. The Licensee must execute all documents and do all things required by the Licensor (acting reasonably) to give effect to such assignment or transfer.

## **5.2 Other transport operators**

- (a) The Licensee must allow other transport operators:
    - (i) which are operating under authorised contracts with the Licensor; and
    - (ii) of which the Licensor notifies the Licensee,to use the Licensed Area for the Permitted Use.
  - (b) The Licensee may seek a reasonable contribution from the other transport operators referred to in clause 5.2(a) towards the operating costs of the Licensed Area, provided the Licensee promptly notifies the Licensor in writing of any such arrangements.
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## **6 Maintenance and repair of Licensed Area**

- (a) The Licensee must during the Term, maintain the Licensed Area in accordance with its obligations under the Services Contract. In addition, the Licensee must, at its cost during the Term, maintain, repair and keep the Licensed Area in good and substantial repair, working order and condition, and this obligation applies to (without limitation) all plate glass, machinery, plant, equipment and fixtures contained in or forming part of the Licensed Area, except for reasonable wear and tear.
  - (b) The Licensee must, if required by the Licensor, undertake works of a capital and/or structural nature in order to maintain or repair the Licensed Area. Such works will be at the Licensor's cost, except where such maintenance or repair is required to be performed by the Licensee under the Services Contract or required due to deliberate, negligent or reckless act or default of the Licensee or its Employees, in which case the works will be at the cost of the Licensee.
  - (c) The Licensee must not undertake and works of a capital and/or structural nature without the prior written approval of the Licensor.
  - (d) The Licensor must comply with all obligations to repair and maintain the Licensed Area specified in the Services Contract, and the Licensee acknowledges and agrees that it is not entitled to request the Licensor to carry out any maintenance or repair works.
  - (e) The Licensee must ensure that any work on the Licensed Area or additions or improvements to the Licensed Area are carried out in a proper and workmanlike manner and in accordance with all applicable Laws, policies and codes.
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## **7 Licensor owns all Improvements**

- (a) The Licensee acknowledges and agrees that the title and rights to an Improvements vest in the Licensor, free and clear of any Security Interest, on the date on which the Improvement is affixed to the Licensed Area whether before or after the Commencement Date.
  - (b) Unless otherwise requested by the Licensor, the Licensee must not remove, demolish or alter any Improvement or any part of an Improvement without the Licensor's prior written consent during the Term.
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## **8 Services Contract**

The Licensee must, at all times during the Term, comply with its obligations and liabilities under the Services Contract.

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## 9 Licence Fee

### 9.1 Amount and method

The Licensee must pay the Licensor (or the Licensor's nominee) the Licence Fee.

### 9.2 Taxes

Clause 57 (Taxes) of the Services Contract applies in relation to Rates and Taxes under this licence as if set out in full in this licence.

### 9.3 Unconditional payment obligation

The Licensee acknowledges and confirms that its obligation to pay all money payable under this licence and the Licensor's right to receive such amounts is absolute and unconditional irrespective of any contingency, and is not subject to any abatement, reduction, set-off, defence, counterclaim or recoupment of any kind. The Licensee may not for any reason withhold a payment in respect of money payable by the Licensee under this licence, including because:

- (a) the Licensee claims to have a right of set-off, counter claim, defence or other right against the Licensor or any other person;
- (b) the Licensed Area is damaged, unavailable or inaccessible;
- (c) there is any defect in the title, condition, design, operation, quality or fitness for use of the Licensed Area;
- (d) there is a prohibition, Force Majeure, arrest or other restriction on the Licensee's use of the Licensed Area; or
- (e) of any other event or circumstance whatsoever,

except where and to the extent that the Licensor is not entitled to the benefit of any limit, waiver or release of its personal liability under this licence.

### 9.4 Interest on overdue amounts

- (a) The Licensee must pay to the Licensor interest on any moneys due and payable but unpaid under this licence (**Financial Default**).
- (b) Interest will accrue at the Default Rate on the amount which is the subject of the Financial Default on a daily basis from (and including) the date on which the amount became due and payable to the date the amount is paid in full both before and after judgment (as a separate and independent obligation).
- (c) The Licensee must pay interest accrued under this clause on demand by the Licensor and on the last Business Day of each month.
- (d) The right to require payment of interest under this clause is without prejudice to any other rights and remedies of the Licensor in respect of the Financial Default.

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## 10 Early surrender

Despite any provision in this licence to the contrary, the parties acknowledge and agree that this licence may be surrendered under clause 25 (Asset restructure by TfNSW) of the Services Contract by TfNSW giving written notice.

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## 11 Termination

### 11.1 Termination of this licence

Notwithstanding any rule of law or equity to the contrary, this licence may not be terminated except as provided in this clause 11.

### 11.2 Termination of Services Contract

This licence will automatically terminate on the Termination Date (as that date is defined under the Services Contract).

### 11.3 Termination by agreement

Subject to clause 11.2, this licence may be terminated by written agreement between the Licensor and the Licensee.

### 11.4 Termination for convenience

The Licensor may (without cost or liability) at any time at its absolute discretion and for convenience by reasonable notice to the Licensee terminate this licence.

### 11.5 Termination by Licensee

The Licensee may not terminate this licence, except with the Licensor's agreement under clause 11.3 or as contemplated by clause 10.

### 11.6 Consequences of termination

- (a) Subject to clause 11.6(b), upon the expiry or termination of this licence (whether through default or expiry or otherwise) the rights and obligations of the parties will cease except for:
  - (i) any obligations arising or rights accrued as a result of an existing breach of this licence by the Licensee;
  - (ii) any outstanding obligations existing as at termination (including any obligation to pay money);
  - (iii) any obligations that are expressed to continue in accordance with the terms of this licence;
  - (iv) any indemnity given by the Licensee under this licence and the Services Contract; and
  - (v) any obligation of confidence under this licence.
- (b) The following clauses survive the expiration or termination of this licence and the expiry of the Term: clause 1 (Defined terms & interpretation), this clause 11 (Termination) and clauses 12 (GST), 13.2 (Indemnity and Limitation of Liability), 13.3(e) (Confidentiality and Privacy), 13.3(f) (Contract management), 13.3(h) (Insurance), 13.3(j) (Reinstatement of loss or damage), 13.3(k)

(Dispute Resolution), 13.3(l) (End of Service Term Asset Condition and Handover Requirements), 13.3(m) (Relationship between Operator and TfNSW), 13.3(n) (Personal Property Securities Act), 13.3(o) (Proportionate Liability), 13.3(p) (Notices), 13.3(q) (Claims), 13.4 (General amendments) and 14 (General), together with any other provisions which are expressed to survive or by their nature impose continuing obligations or rights for the relevant parties, separate and independent from the other obligations or rights of the parties.

## 11.7 Waiver

If this licence is lawfully terminated, the Licensee waives any rights it might otherwise have to pursue a claim of restitution of any kind (including a claim of unjust enrichment) against the Licensor.

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## 12 GST

### 12.1 Interpretation

Words or expressions used in this clause 12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

### 12.2 Consideration is GST exclusive

Any consideration to be paid or provided to the Licensor for a supply made by the Licensor under or in connection with this licence, unless specifically described in this licence as 'GST inclusive', does not include an amount on account of GST.

### 12.3 Gross up of consideration

Despite any other provision in this licence, if the Licensor makes a supply under or in connection with this licence on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this licence but for the application of this clause (**GST exclusive consideration**) is increased by, and the Licensee must also pay to the Licensor, an amount equal to the GST payable by the Licensor or the representative member of a GST group of which the Licensor is a member on the supply (**GST Amount**); and
- (b) the GST Amount must be paid to the Licensor by the Licensee without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 12.4 Reimbursements (net down)

If a payment to a party under this licence is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group of which that party is a member, is entitled for that loss, cost or expense.

### 12.5 Tax invoices

The Licensor will issue a tax invoice for any taxable supply that it makes to the Licensee under this licence.

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## **13 Application of Services Contract Clauses**

### **13.1 Step-in Powers**

The Licensee acknowledges the rights and powers of a Step in Party under clause 45 (Step-in) of the Services Contract.

### **13.2 Indemnity and Limitation of Liability**

Clause 41 (Indemnity and Limitation of Liability) of the Services Contract applies to this licence with the amendments set out in clause 13.4.

### **13.3 Clauses incorporated**

The following clauses of the Services Contract form part of this licence as if they were set out in full in this licence except for the general amendments set out in clause 13.4 and those specified below:

- (a) clause 20 (Infrastructure);
- (b) clause 21 (Licensed Areas and Utility Services) (but excluding clause 21.3 (if applicable following exercise of the relevant Option (as that term is defined in the Services Contract)) and paragraph 8 (Licensed Area Management) of Schedule 1A (Services – Bus Services Management));
- (c) clause 23 (Asset Management);
- (d) clause 24 (Dealing with Assets);
- (e) Part H (Confidentiality and Privacy);
- (f) clause 31 (Contract management);
- (g) clause 32 (Accreditation and compliance);
- (h) clause 33 (Reporting);
- (i) clause 40 (Insurance), other than clauses 40.1(a)(iv) to 40.1(a)(viii) and clause 40.1(a)(ix);
- (j) clause 42 (Reinstatement of loss or damage);
- (k) clause 43 (Dispute Resolution);
- (l) clause 50 (End of Service Term Asset Condition and Handover Requirements);
- (m) clause 53 (Relationship between Operator and TfNSW);
- (n) clause 54 (Personal Property Securities Act);
- (o) clause 56 (Proportionate Liability);
- (p) clause 61 (Notices); and
- (q) clause 70 (Claims).

## **13.4 General amendments**

The clauses of the Services Contract incorporated under clauses 1.2, 1.3, 13.2 and 13.3 (and the meaning of the defined terms used in those clauses) shall be read with the following amendments unless specified otherwise in those clauses:

- (a) each reference to the following defined terms is replaced as follows:
    - (i) 'this Contract' and 'the State Dedicated Facility Licence' with 'this licence';
    - (ii) 'Operator' with 'Licensee';
    - (iii) 'TfNSW' with 'Licensor'; and
    - (iv) 'Term' with 'the period commencing on the Service Commencement Date and ending on the date this licence expires or is terminated in accordance with this licence'; and
  - (b) references to 'clauses' and 'Schedules' are references to the clauses and Schedules of the Services Contract unless the reference is to a clause that has been incorporated into this licence in which case, it refers to that clause as it reads under this licence.
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## **14 General**

### **14.1 Entire agreement**

This licence and the Transaction Documents contain the entire agreement between the parties with respect to their subject matter and supersede all prior agreements and understandings between the parties in connection with the subject matter.

### **14.2 Amendment**

No amendment or variation of this licence is valid or binding on a party unless made in writing executed by all parties.

### **14.3 No waiver**

No failure to exercise nor any delay in exercising any Power by a party operates as a waiver. A single or partial exercise of any Power does not preclude any other or further exercise of that or any other Power. A waiver is not valid or binding on the party granting that waiver unless made in writing.

### **14.4 Further assurances**

Each party must execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this licence.

### **14.5 Costs**

Each party must pay its own costs of negotiation, preparation and execution of this licence.

### **14.6 Governing law and jurisdiction**

This licence is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this licence.

#### **14.7 Rights Cumulative**

Subject to any express provision in this licence to the contrary, the rights, powers and remedies of a party under this licence are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

#### **14.8 No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by a Transaction Document. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

#### **14.9 Severability**

Any provision of this licence that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this licence nor affect the validity or enforceability of that provision in any other jurisdiction.



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## Execution page

Executed as a deed

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

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Signature of witness

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Signature of authorised delegate

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Name of witness (print)

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Name of authorised delegate (print)

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**Signed** by **[insert] Pty Ltd** (ACN insert) in accordance with section 127 of the Corporations Act 2001 (Cth) by:

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Signature of director

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Signature of director/secretary

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Name of director (print)

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Name of director/secretary (print)

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**Annexure A – Plan of Licensed Area**