



Government of **Western Australia**
Department of **Transport**

2024

THE STATE OF WESTERN AUSTRALIA

AND

[Grantee]

**GRANT FUNDING AGREEMENT FOR THE
DRIVING ACCESS AND EQUITY PROGRAM**

Department of Transport

140 William Street PERTH 6000

[Reference Number]

CONFIDENTIAL

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THIS AGREEMENT is made the _____ day of _____ 2023

BETWEEN:

THE STATE OF WESTERN AUSTRALIA acting through the Chief Executive Officer of the Department of Transport, 140 William Street, Perth, WA (Grantor)

and

[Grantee NAME] [ABN], [GRANTEE'S ADDRESS].

RECITALS

- A In August 2021, the Minister for Transport announced that the State had allocated funding for a pilot program to help disadvantaged Learner Drivers (or potential Learner Drivers), particularly those living in regional Western Australia, get their driver's licence.
- B. The initiative involves allocating grant funds to identified and suitable persons and organisations and co-ordinating funding programs to improve identified beneficiaries' access to driver's licenses.
- C. The Grantee has applied to the Grantor for funding for the Grantee's Program which has the aim of implementing the Minister's initiative.
- D. The Grantor has agreed to allocate funding to the Grantee upon and subject to the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this Grant Funding Agreement, including its recitals and any schedules or annexures.

Auditor means the Auditor General or an accountant who is independent of, and not related in any way to, the Grantee and is a member of CPA Australia, the Institute of Public Accountants in Australia or the Institute of Chartered Accountants in Australia.

Auditor General means the Auditor General for the State of Western Australia.

Beneficiaries means persons who will be the ultimate beneficiaries of this funding grant and who are:

- a) either unemployed, or employed but whose income is such that they are entitled to Commonwealth welfare grants or subsidies of whatsoever nature; or
- b) based in geographic locations, where the Minister for Transport determines that the provision of driving instruction (whether by the provider of services for reward or on a voluntary basis) is lacking; or
- c) persons that the Minister for Transport determines are appropriate beneficiaries considering the present adequacy of motor vehicle driver training services available and the effect upon the existing services if grant funding was to be provided to the Grantee.

Business Day means a day other than a Saturday, Sunday or a public holiday in Western Australia.

Claim means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

Commencement Date means the date of execution of this Agreement by the last Party to do so.

Completion Date means the date specified in Item 1(f) of Schedule 1 to this Agreement, which date may be extended in accordance with the terms of this Agreement.

Confidential Information includes any information relating to the business affairs and processes of the Parties, obtained by virtue of this Agreement, including the amount of the Grant Funds, which would not otherwise be available to the general public and all information marked as confidential as well as information which by its nature is confidential, is known to be confidential or which Party receiving the information from the other Party ought to have known was confidential, and includes all such information that may be in the possession of their employees, agents and contractors.

Department means the Department of Transport.

Department's Representative means the following Department employees, Chief Executive Officer, Managing Director, Executive Director Regional Services, Executive Director Driver and Vehicle Services, and any person duly authorised by one of these representatives.

Driver Volunteer means a person who offers to supervise a Learner Driver to gain driving experience and complete the logbook identified as such in the Grantee's Program Documentation who:

(a) is either:

- (i) a person who holds a licence issued under the *Motor Vehicle Drivers Instructors Act 1963* to give driving instruction; or
- (ii) a person who may give driving instruction (which includes supervision) under regulation 43(2)(b) of the *Road Traffic (Authorisation to Drive) Regulations 2014* (i.e. the commonly understood had-your-licence-for-4-years rule for vehicles other than mopeds);

in respect of the class of vehicle being driven by the Learner Driver; and

(b) is compliant with Western Australian public health directions regarding the COVID-19 pandemic, and who holds a recent National Police Clearance certificate no more than three months old and a Working with Children's card.

Evaluation or Audit means one or more of an audit, examination, investigation, inspection, review, evaluation, or a similar activity.

Event of Default means the occurrence of one or more things set out in clause 10.1.

Final Report means the last Milestone Report which in the case of the Final Report, in addition to the Program Documentation for that Milestone, must also include:

- (a) a Financial Statement of Income and Expenditure for the Grantee's Project that:
 - (i) sets out the Grantee's Project's revenue and expenses including all invoices and receipts of payment as well as payslips for all employees, contractors and agents (including reimbursement for all volunteers);
 - (ii) confirms the Grantee's Project's financial accounts as true and accurate;
 - (iii) confirms that the entire Grant Funds, other than any of the Grant Funds that were returned to the Department under clause 5.2 (if any), were spent by the

Grantee and applied to the Grantee's Project purpose in accordance with this Agreement;

- (iv) is certified by an Auditor, other than the Auditor General;
- (v) includes a concise summary of what the Grantee's Project has achieved, and compares the outcomes, Milestones and performance of the Grantee's Project as stated in this Agreement; and
- (vi) be certified by a Director or the Secretary of the Grantee.

Financial Records means and includes invoices, fuel receipts, bank statements, copies of cheques, reconciliations of bank balance, receipts, and expenditure.

Government Agency means and includes any department or organisation as defined in section 3 of the *Public Sector Management Act 1994*.

Grant Details means the details relating to the grant specified in Item 1(b) of Schedule 1 to this Agreement.

Grant Funds means the sum specified in Item 1(b) of Schedule 1 to this Agreement.

Grant Vehicle Use Policy means the policy annexed as Schedule 3 to this Agreement.

Grantee means the Grantee specified in Item 1(a) of Schedule 1 to this Agreement.

Grantee's Program means the driving access and equity program set out in Schedule 2 to this Agreement.

Grantor means the State of Western Australia acting through the Chief Executive Officer of the Department of Transport.

GST means the goods and services tax applicable to any taxable supplies as determined by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and includes all associated legislation and regulations.

Insolvency Event means the happening of any of these events:

- a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- b) except to reconstruct or amalgamate while solvent, a body corporate:
 - (i) is wound up or dissolved; or
 - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
 - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001 (Cth)*) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
- f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment or money or the recovery of any property; or

- g) a body corporate:
- (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
 - (ii) stops or suspends payment of all, or a class of, its debts; or
 - (iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
 - (a) insolvent or unable to pay its debts when they fall due; or
 - (b) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth); or
 - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth); or
 - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- h) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken that could result in that event; or
- i) anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Law means all applicable present and future laws including:

- (a) all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth;
- (b) Authorisations;
- (c) Principles, requirements and rules of the common law or equity;
- (d) standards, codes, policies and guidelines; and
- (e) the ASX listing rules.

Learner Driver means a person who is driving a vehicle for the purposes of the Grantee's Program under the authority of either:

- (a) learner's permit; or
- (b) provisional licence;

in respect of that class of vehicle with a Volunteer Driver providing instruction as required by either or both of:

- (i) regulation 47(3)(a) of the *Road Traffic (Authorisation to Drive) Regulations 2014* which provides the requirement for learner's permit holders to only drive the relevant vehicle under the instruction of a driving instructor; or
- (ii) regulation 16A(2) of the *Road Traffic (Authorisation to Drive) Regulations 2014* which provides the requirement for at least 50 hours driving in the course of instruction to be recorded in a log book in the circumstances in which that regulation applies.

Milestone means a milestone set out in item 1(c) of Schedule 1.

Milestone Report means a detailed electronic statement on activities attempted and completed during the reporting period, identifying progress towards the outcomes identified in schedule 2 and may include an audited financial statement.

Nominated Officer for a Party means the officer nominated under clause 14.

Participant Data means an electronic statement providing the details of Beneficiaries involved in the Grantee's Program and their progress towards attaining a driver's licence, completed at the end of each period as defined in Item 1(c) of Schedule 1 and as certified by the Department's Nominated Officer and supported by the Program Documentation.

Party means each of the Grantor or the Grant as the context requires, and **Parties** means both of them.

Program Documentation means the list of documentation specified in Item 1(d) of Schedule 1 to this Agreement.

Program Location means the location specified in Item 1(a) of Schedule 1 to this Agreement.

Progressive Payments means the list of payments to be made pursuant to this Agreement, specified in Item 1(c) of Schedule 1 to this Agreement.

Project Establishment Report means an electronic statement providing details regarding the establishment of the program, such as proof of purchase of vehicles including the provision of car registration numbers, information regarding staff appointment and training.

Senior Staff Member means a staff member of the Grantee who performs or holds any executive or managerial role including the role of chief executive officer, chief financial officer or an equivalent or similar role, or the role of head of a department or division, manager, senior project officer, or any other senior role.

SmartyGrants means the grant administration software of the same name that is promoted at www.smartygrants.com.au as at the date of this agreement.

State means the State of Western Australia.

Vehicle means the vehicle to be used in the Grantee's Program, the details of which are set out in Item 1(b) of Schedule 1 to this Agreement.

1.2. Interpretation

In this Agreement unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (d) references to parts, clauses, Schedules and Parties are references to parts and clauses of, and Parties to, this Agreement;
- (e) the word 'person' includes an individual, a body corporate, an unincorporated body or association, or any Government Agency and includes, in the case of a natural person, a reference to the person's personal representatives, executors, administrators, successors and assigns and, in the case of a body corporate, a reference to its successors and assigns;
- (f) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (g) references to statutes, regulations, ordinances and by-laws when contained in this Agreement include amendments, re-enactments or consolidations of any of them and a reference to a statute includes every regulation, proclamation, ordinance and by-law issued under that statute;
- (h) a reference in this Agreement to a subclause, paragraph or subparagraph is a reference to a subclause, paragraph or subparagraph in the clause in which the reference appears;
- (i) a reference to a Party, if that Party ceases to exist or is reconstituted, renamed or replaced, or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions;

- (j) a reference to the word “including” is deemed to be followed by the words “but not limited to”;
- (k) this Agreement is to be interpreted as a deed;
- (l) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (n) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier;
- (o) a reference to information includes data, projections, advice, undertakings and documentation;
- (p) the powers and duties of the Department under this Agreement may be exercised by the Nominated Officer; and
- (q) the words “at its cost” do not preclude the Grantee using Grant Funds if specifically authorised in writing in this Agreement or if specifically authorised in writing by the Department’s Nominated Officer.

1.3. Reg 43(2)(a) of the Road Traffic (Authorisation to Drive) Regulations 2014

For the avoidance of doubt nothing in this Agreement shall be construed as authorising any person or body to conduct or supervise a youth driver education course to which regulation 43(2)(a) of the *Road Traffic (Authorisation to Drive) Regulations 2014* applies.

2. TERM

- (a) This Agreement begins on the Commencement Date and ends with the earlier of the Department’s acceptance of the Final Report and termination under clause 10 of this Agreement.
- (b) Clauses 3(f), 4, 5.1(c), 5.1(d), 5.2, 5.5, 5.6, 7, 6.1, 10.3, 12, 14, 15, 19, 21, 22, 23 and Schedule 3 survive this Agreement.

3. PAYMENT OF GRANT FUNDS

- (a) The Grant Funds, the subject of this Agreement, is the sum specified in Item 1(b) of Schedule 1 to this Agreement, is exclusive of GST if applicable and the Grant Funds are payable as set out in the Grant Details and table of Progressive Payments.
- (b) The Grantor shall pay the Grant Funds in the amounts set out in Item 1(c) of Schedule 1 upon the Grantee reaching the Milestones set in that item.
- (c) The Grantee is to provide the Department with the Milestone Report and applicable Program Documentation certified by the Department’s Nominated Officer within five (5) days of the dates specified in Item 1(c) of Schedule 1 as a condition of receiving the Grant Funds.
- (d) The Grantee acknowledges that after receiving the first Progressive Payment on execution of this Agreement no further Progressive Payments may be paid unless the Milestone Report and relevant Program Documentation have been received and completed to the satisfaction of the Department’s Nominated Officer.
- (e) The Grantee acknowledges that failure to comply with the terms of this Agreement and the Grantee’s obligations under this clause 3 will constitute an Event of Default.

- (f) The Grant Funds have been approved and allocated by the Department on the strict understanding that neither the Grantor nor the Department accept any responsibility or are under any liability for the success or otherwise of the Grantee's Program and neither the Grantor nor the Department is liable for any losses which may be incurred by the Grantee in undertaking the Grantee's Program.

4. DEPARTMENT

- (a) The Department acts for and on behalf of the Grantor and may at any time perform any of the Grantor's Obligations and exercise the Grantor's rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the Grantor has the right or obligation to take, make, give or withhold under this Agreement or at law.
- (b) The Grantee agrees to treat any notices or other communications (including any requests) from the Department as being from and on behalf of the Grantor.
- (c) Where the Grantee has any Obligation to remit or pay monies to the Grantor, the Grantee must make payment to the Grantor in the manner requested by the Grantor, including making payment into a bank account nominated by the Grantor if so requested, which may be a bank account held in the name of the Department.

5. USE OF GRANT FUNDS

5.1. Use of Grant Funds

- (a) The Grantee must use the Grant Funds exclusively for the Grantee's Program.
- (b) The Grantee must commence the Grantee's Program as soon as practicable after the Commencement Date and complete the Grantee's Program by the Completion Date. The Completion Date may be extended at the Department's sole discretion upon written application by the Grantee.
- (c) If a grant is allocated for the purchase of a Vehicle:
 - (i) the Grantee shall ensure the Vehicle is registered in the Grantee's name;
 - (ii) the Grantee shall ensure that the Vehicle is not used for purposes other than driver instruction, supervision or assessment;
 - (iii) the Grantee shall ensure that the Vehicle is used and stored in accordance with the Grant Vehicle Use Policy and shall comply with Schedule 3 in any other respect; and
 - (iv) the Grantee shall at its cost:
 - (A) ensure that the Vehicle is appropriately licensed for the purposes for which it is to be used;
 - (B) maintain the Vehicle in a clean, tidy and roadworthy condition; or
 - (C) have the Vehicle serviced at the intervals recommended by its manufacturer for that Vehicle either:
 - (I) in the manufacturer's manual applicable to the Vehicle; or
 - (II) in writing by that manufacturer's distributor in Australia.
- (d) The Vehicle cannot be sold or transferred without the prior written approval of the Department of Transport

5.2. Repayment of Unexpended Grant Funds

The Grantee must repay to the Department any Grant Funds that the Department has paid which are not used in accordance with this Agreement unless the Department agrees in writing that the Grantee can retain unexpended Grant Funds.

5.3. No changes to the Grantee's Program

The Grantee must not make any changes to the Grantee's Program without the prior written consent of the Department.

5.4. Acknowledgment of the Grantor and the Department

The Grantee shall acknowledge the contribution of the Grantor, and the Department to the Grantee's Program in any communications in relation to the Grantee's Program and this Agreement including presentations, publications, signage, articles, newsletters, or other literary works relating to the Grantee's Program.

5.5. Accounts

The Grantee is to keep proper Financial Records in accordance with accepted accounting principles and practices.

5.6. Requests for information

The Grantee is to provide the Department with any documents or information relating to this Agreement or the Grantee's Program including Financial Records within ten (10) Business Days of receiving such a request from the Department's Nominated Officer.

5.7. Special Condition of this Agreement

- (a) The Grantee agrees to comply with the special conditions, if any, specified in item 1(e) of Schedule 1 to this Agreement
- (b) The Grantee will obtain each Beneficiaries' written consent to submit information relevant to their progress to obtain a Driver's Licence to the Department. The written consent must be in the Form set out in Schedule 4.

5.8. General obligations of the Grantee

The Grantee shall:

- (a) at all times duly perform and observe its obligations under this Agreement and promptly inform the Department of any occurrence which might adversely affect its ability to do so in a material way;
- (b) undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) not, nor attempt to, transfer, assign, or otherwise dispose of or deal with any of its rights, entitlements and powers or obligations under this Agreement;
- (d) comply with all State and Commonwealth statutes, rules, regulations and by-laws;
- (e) co-operate fully with the Department in the administration of this Agreement; and
- (f) upon reasonable notice, provide the Department's Nominated Officer or one or more of the Department's Representatives with access to the Grantee's premises, Financial Records, other documents, equipment, and other property for the purpose of audit and inspection by the Department in order to verify compliance by the Grantee with this Agreement.

5.9. Obligations relating to employees under the Grantee's Program

- (a) The Grantee acknowledges that a Driver Volunteer, driving instructor and any other person employed or contracted as part of the Grantee's Program is the Grantee's volunteer, employee, agent or contractor and is not an employee, agent or contractor of the Department.
- (b) The Grantee is responsible for payment and administration of all employee, agent or contractor related costs under the Grantee's Program, including wages, superannuation, worker's compensation and income tax;
- (c) The Grantee warrants that other than a Driver Volunteer who participates in this initiative by virtue of this Agreement, its employees, agents and contractors are competent and have all the necessary skills, training and qualifications to carry out the Grantee's Program;
- (d) The Grantee shall at all times ensure that work on the Grantee's Program is carried out in a conscientious, expeditious and professional manner by all persons involved in the Grantee's Program;
- (e) The Grantee shall ensure and warrant that all persons involved in the Grantee's Program shall strictly comply with all ethical codes and standards imposed by the appropriate professional bodies and with all relevant statutes, regulations, ordinances and by-laws; and
- (f) Other than for a Driver Volunteer who participates in this initiative by virtue of this Agreement, the Grantee must ensure that the remuneration and terms of employment of all its employees, agents and contractors for the duration of the Grantee's Program will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

5.10. Publicity

The Grantee shall:

- (a) Seek prior written approval from the Department for all press releases and public announcements relating to the award of the Grant Funds and use of the Grant Funds.
- (b) Seek prior written approval from any relevant Beneficiary or Volunteer Driver for all press releases and public announcements which may refer to them or contain a photograph of them. The Beneficiary's approval is to be in writing in the Form attached hereto as Schedule 4.
- (c) Provide drafts of Program-related signage, publications, education programs and similar written or printed items to the Department for comment and approval prior to final production or publication.

5.11. Adverse Events

The Grantee must:

- (a) notify the Department of any actual, pending or threatened Claim, against one or more of the Grantee, a Related Body Corporate or a Senior Staff Member as soon as practicable after the Grantee first becomes aware of that Claim;
- (b) notify the Department immediately if the Grantee is in breach of any Law, receives an audit qualification, or breaches, fails to obtain or is under scrutiny through an

inquiry or decree in respect to (as applicable) any consent, registration, approval, licence or permit or agreement, order or award binding on the Grantee or which the Grantee requires in order to carry out one or both of the Grantee's Program or its business; and

- (c) notify the Department immediately if the Grantee becomes aware of any fraud or corruption in relation to the Grantee's Program, the Grant Funds, any interest which accrues on the Grant Funds, or this Agreement.

5.12. Warranty concerning information provided by Grantee

The Grantee warrants that all information provided by it to the Grantor or the Department under, in relation to, or preparatory to this Agreement is true, correct and complete and in no way misleading or deceptive. If information so given is or becomes untrue or incorrect in any way, the Grantee must promptly notify the Department, giving the Department all relevant details (including details of any developments as and when they occur).

5.13. No Endorsement

The Grantee agrees that nothing in this Agreement constitutes an endorsement by the Grantor or the Department of any goods or services provided by the Grantee.

6. INSURANCE

6.1. Grantee's Insurance Requirements

- (a) The Grantee must take out and maintain insurance at its cost in relation to all insurable liabilities of the Grantee under the Grantee's Program including:
 - (i) a public risk liability covering the Grantee's liability and that of its employees, agents and contractors for an amount of not less than \$20 million for any one occurrence and unlimited in the aggregate and which covers death and personal injury and property damage caused by the negligent acts or omissions of the Grantee or its employees, agents or contractors;
 - (ii) workers compensation insurance in accordance with the provisions of the *Workers Compensation and Injury Management Act 1981 (WA)*, including cover for common law liability for an amount of not less than \$50 million for any one occurrence. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers Compensation and Injury Management Act 1981*;
 - (iii) comprehensive motor vehicle insurance for the Vehicle for the full market value of the Vehicle and which must cover the driving of the Vehicle by both Learner Drivers and Driver Volunteers; and
 - (iv) volunteer accident insurance for Volunteer Drivers covering illness, injury or death caused by or arising out of their volunteer work under the Grantee's Program include but not limited to motor vehicle crashes.
- (b) The Grantee must ensure that all its agents and contractors or nominees have the following insurance policies in place at no cost to the Grantor before undertaking the Grantee's Program:
 - (i) public liability insurance covering the legal liability of the provider and its employees and contractors arising out of the Grantee's Program for an amount of not less than \$20 million for any one occurrence and unlimited in the aggregate; and

- (ii) workers compensation insurance in accordance with the provisions of the *Workers Compensation and Injury Management Act 1981 (WA)*, including cover for common law liability for an amount of not less than \$50 million for any one occurrence. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers Compensation and Injury Management Act 1981*.

6.2. Maintenance of Insurance

The insurances required under this clause 6 are to be maintained for a period being at least three (3) months beyond the Completion Date of the Grantee's Program.

6.3. Insurance Certificates of Currency

The Grantee must provide the Department with copies of certificates of currency for all of the insurances referred to in this clause. Within 10 Business Days from:

- (a) the Commencement Date;
- (b) the date any insurance policy is renewed or varied; and
- (c) Any other request by the Department.

6.4. Not to adversely affect the validity of any policy

The Grantee must not do anything or permit any person including its employees, agents and contractors to do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the insurance policies referred to in this clause.

6.5. Notice to Department

- (a) The Grantee must give notice to the Department immediately if:
 - (i) an event occurs which may give rise to a claim under any insurance policy in relation to the Grantee's Program (including under any insurance policy held by a sub-contractor in relation to the Agreement) and must keep the Department informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;
 - (ii) an event occurs which could adversely affect any insurance policy in relation to the Agreement (including under any insurance policy held by a sub-contractor in relation to the Agreement); or
 - (iii) any insurance policy in relation to the Agreement (including under any insurance policy held by a sub-contractor in relation to the Agreement) is cancelled;
- (b) The Grantee must give the Department prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any insurance policy effected by the Grantee in relation to the Agreement or in accordance with the *Insurance Contracts Act 1984 (Cth)*.

7. INDEMNITY

- (a) The Grantee indemnifies the State of Western Australia and its officers, employees, agents and contractors against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) as a result of any action, suit, claim, demand or proceeding taken or made by any third party arising from or in connection with:

- (i) any breach of an obligation under this Agreement by the Grantee or any of its employees, agents or contractors;
 - (ii) any wilful, tortious or unlawful act or omission of the Grantee or any of its employees, agents or contractors; or
 - (iii) any breach of a State or Commonwealth statute, regulation, ordinance and by-law relevant to this Agreement by the Grantee or any of its employees, agents or contractors.
- (b) The Grantor and the Department agree to use its best endeavours to co-operate with the Grantee, at the Grantee's cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of the indemnity under this clause.

8. INSPECTION AND SITE MEETINGS

- (a) To ensure that the Grantee's Program objectives are being met, the Grantee shall permit the Nominated Officer or one or more of the Department's Representatives to inspect the Program Location from time to time provided that the Nominated Officer or the Department's Representative in question gives prior reasonable notice of intention to inspect.
- (b) Notwithstanding the above, the Department accepts no supervisory role in the Grantee's Program and takes no responsibility for the overall safety, compliance or any other obligations regarding the Grantee's Program.

9. NO AGENCY

This Agreement does not establish an agency, employment or partnership relationship between the Grantor or the Department and the Grantee and the Grantee shall not hold itself out as an agent, employee, partner or representative of the Grantor or the Department.

10. DEFAULT, TERMINATION AND SUSPENSION

10.1. Event of Default by the Grantee

The Grantee acknowledges and agrees that the following occurrences are Events of Default:

- (a) the Department believes the Grantee has not complied with any of its obligations in relation to Schedule 1 or Schedule 3 of this Agreement.
- (b) the Department believes on reasonable grounds that the Grant Funds, or part of the Grant Funds, is not being used exclusively for the Grantee's Program;
- (c) the Department believes on reasonable grounds that the Grant Funds, or part of the Grant Funds, is not being used, or has not been applied to the Grantee's Program with competence, efficiency and diligence;
- (d) the Department believes that the Grantee has used or committed, or will use or commit, all or part of the Grant Funds:
 - (i) for a purpose or purposes inconsistent with or contrary to this Agreement and the Grantee's Program;

- (ii) imprudently or in an unreasonable fashion having regard to the purpose of this Agreement; or
 - (iii) for services for which the Grantee has paid or will pay a price which is unreasonably high;
- (e) the Grantee suffers, or is or becomes subject to, an Insolvency Event;
 - (f) the Grantee is unable or unwilling to commence or continue work on the Grantee's Program;
 - (g) the Grantee does not provide the Milestone Reports as set out in Item 1 (c) of Schedule 1 and in accordance with dates set out in Progressive Payments;
 - (h) the Grantee breaches this Agreement and does not completely rectify the breach within ten (10) Business Days of receipt of a written notice from the Department's Nominated Officer specifying the breach and calling upon the Grantee to rectify the breach;
 - (i) the Grantee breaches a provision of this Agreement, which breach cannot be completely rectified;
 - (j) the Grantee breaches or is likely to breach an agreement it has with a third party which will or is likely to result in the Grantee's Program being jeopardised or adversely affected;
 - (k) the Grantee enters or is likely to enter into an agreement or arrangement with a third party which will or is likely to result in the Grantee's Program being jeopardised or adversely affected, or this Agreement being breached;
 - (l) the Grantee does not promptly inform the Department of any occurrence which may adversely affect the Grantee's Program in a material way or adversely affects the ability of the Grantee to deliver the Grantee's Program;
 - (m) the Grantee does not act with integrity, good faith and probity in accordance with good corporate governance practices;
 - (n) the Grantee attempts to transfer, assign, and otherwise dispose of or deal with any of its rights, entitlements and powers under this Agreement;
 - (o) the Grantee does not comply with all State or Commonwealth statutes, regulations, ordinances and by-laws;
 - (p) the Grantee does not reasonably co-operate with the Department in the administration of this Agreement; or
 - (q) the Grantee refuses upon reasonable notice to provide the Department, the Department's Nominated Officer or one or more of the Department's Representatives with access at any reasonable time and from time to time to the Grantee's premises, Program Location, Financial Records, other documents, equipment and other property for the purpose of audit and inspection by the Department in order to verify compliance by the Grantee with the Grantee's Program and this Agreement.

10.2. Event of Default occurs

- (a) If an Event of Default occurs, the Department may terminate the Agreement by giving the Grantee notice of termination.
- (b) The date of termination is the date when the Grantee receives the notice of termination or such other date set out in the notice.

10.3. Termination of Agreement

If the Grantee receives notice of termination:

- (a) the Grantee:
 - (i) may use Grant Funds already received and which are necessary to meet commitments properly incurred in the purchase of goods and/or services relating to the Grantee's Program prior to the receipt of such notice;
 - (ii) must not purchase any further goods and/or services relating to the Grantee's Program or this Agreement or make any further commitments relating to the purchase of goods and/or services relating to the Grantee's Program or this Agreement unless permitted in writing by the Department to do so;
 - (iii) must, within 30 Business Days after having received notice of termination, refund to the Department, with any interest it has earned all the Grant Funds which are unexpended and not subject to any properly incurred commitments;
 - (iv) must, if requested by the Department in writing, remit to the Department within twenty (20) Business Days from the date of the Department's request all of the Grant Funds paid to the Grantee that has been spent or committed. If the Department only requests the Grantee remit part of those monies, then the Grantee must remit that part of those monies within twenty (20) Business Days from the date of the Department's request; and
 - (v) if a grant is allocated for the purchase of a Vehicle, must if requested by the Department in writing:
 - (I) return the Vehicle to the Department, at a place nominated by the Department in writing, within ten (10) Business Days from the date of the Department's request; and
 - (II) complete any forms provided by the Department that are necessary to transfer the Vehicle to the Department or any person nominated in writing by the Department;at the Grantee's cost and at no cost to the Grantor and the Department, except to the extent that the Department, in its absolute discretion, sets off the value of the Vehicle against any money owing by the Grantee to the Grantor under this Agreement; and
- (b) the Grantor has no further obligation to pay the Grantee any part of the Grant Funds which has not yet been paid to the Grantee.

10.4. Reduction or suspension of Grant Funds

- (a) If the Department has reasonable grounds to believe that an Event of Default has occurred or is likely to occur, the Department may reduce or suspend the payment of Grant Funds for the Grantee's Program.
- (b) The Department may, in their absolute discretion, recommence payment of the Grant Funds if and when the Grantee has rectified the Event of Default.

11. GOODS AND SERVICES TAX

- a) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Grant shall be exclusive of GST:
- b) The obligation of the Grantor to pay the GST on any supply by the Grantee under this Agreement is conditional upon the prior issue by the Grantee to the Grantor of a tax invoice which complies with the GST Act. This provision applies notwithstanding any Law to the contrary.
- c) The Grantee warrants that it is registered for GST and will notify the Department as soon as practicable of any change to the Grantee's registration; and
- d) The Grantor warrants that the Department is registered for GST and will notify the Grantee as soon as practicable of any change to the Department's registration.

12. EVALUATION OR AUDIT RIGHTS

At any time until Five (5) years after the expiry or earlier termination of this agreement, the Grantor may arrange for an Evaluation or Audit to be carried out in relation to this Agreement by either the Department, an Auditor or any other person that the Grantor in its absolute discretion wishes to carry out the Evaluation or Audit. If the Grantor arranges for an Evaluation or Audit:

- (a) the Grantor must notify the Grantee that the Grantor has arranged for an Evaluation or Audit to be carried out; and
- (b) the Grantee must allow all persons appointed by the Grantor to carry out the Evaluation or Audit to:
 - (i) have full access to all documents, records and premises in the control or possession of the Grantee for the purpose of carrying out the Evaluation or Audit; and
 - (ii) make and take copies of any and all documents and records in the control or possession of the Grantee relating in any way to this Agreement.

13. FREEDOM OF INFORMATION ACT & FINANCIAL MANAGEMENT ACT 2006

- (a) The Grantee acknowledges and agrees that this Agreement and information regarding it is subject to the *Freedom of Information Act 1992* and that the Department may publicly disclose information in relation to this Agreement, including its terms and the details of the Grantee.
- (b) The Parties acknowledge and agree that, despite any provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* are not limited or affected by this Agreement.
- (c) The Grantee must allow the Auditor General, or an authorised representative, to have access to and examine the Financial Records and other information concerning this Agreement.

14. NOTICES AND NOMINATED OFFICERS

- (a) Each Party is to have a Nominated Officer to receive notices and other communications and is to immediately inform the other Party of any changes to the Nominated Officer or to their contact details.

- (b) The name, address, email address and other contact details of the Parties initial Nominated Officers are set out in item 2 of Schedule 1:
- (c) Each Party is to send any notice or other communication under this Agreement to the other Party's Nominated Officer by:
 - (i) hand delivery;
 - (ii) prepaid post; or
 - (iii) by email to the email address;Using that Nominated Officers address or email (as the case may be).
- (d) Subject to paragraph (e), any notice or other communication is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting; and
 - (iii) in the case of email, on the date of transmission.
- (e) If received after 5.00 pm or on a day other than a Business Day, a notice or communication is taken to be received on the next Business Day.

15. WAIVER

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by the Party waiving such right.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- (c) Any failure to enforce this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party will not be construed as a waiver of any rights.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

17. VARIATION OF THE AGREEMENT

- (a) Other than for clause 17(b), and any extension of the Completion Date in accordance with clause 5.1(b), any modification, amendment or other variation to this Agreement must be made in writing duly executed by both Parties.
- (b) The Grantor may unilaterally amend the Grant Vehicle Use Policy set out in Schedule 3. While the Grantee may, if good reason exists, apply in writing to the Grantor to amend the Grant Vehicle Use Policy, it will be entirely at the Grantor's discretion to do so.

18. DISPUTE RESOLUTION

- (a) The Parties agree to use reasonable commercial efforts to resolve by negotiation any problem that arises between them under this Agreement. Neither Party will resort to legal proceedings, and the Department will not take steps to terminate this Agreement until the following process has been exhausted, except if it is necessary to seek an urgent interim determination or relief.

- (b) If a dispute arises, including a breach or an alleged breach of this Agreement, which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at an operational level, a Party concerned about the problem may notify the other. Management representatives of each of the Parties will then endeavour in good faith to agree upon a resolution.

19. CONFIDENTIALITY

- (a) The Grantee shall make no written or oral announcements or representations to anyone including the media regarding the amount of the Grant Funds provided by the Department without the written authorisation of the Department.
- (b) The Parties shall treat as confidential any Confidential Information and will not disclose this information to any person other than its employees, officers, agents, and contractors and its legal and financial advisers, who legitimately and reasonably require such Confidential Information in order to properly discharge the duties:
 - (i) they were employed or engaged to discharge; and
 - (ii) which they would ordinarily and reasonably be expected to discharge on account of such employment or engagement;

unless:

- (A) required to do so under or pursuant to a provision of a statute, regulation, by-law or ordinance in operation in Australia from time to time (which for clarity in the case of the Department includes disclosures to the Minister for Transport); or
 - (B) required to do so by virtue of an order or direction given to it by or on the part of the Parliament or the Department or by Court or Tribunal of the relevant jurisdiction.
- (c) The Grantee agrees that it will ensure that its employees, agents and contractors and nominees and legal and financial advisers comply with the obligations of confidentiality specified in this clause.

20. DUTIES

If applicable, the Grantee will pay any duty payable in respect of this Agreement.

21. RIGHTS, POWERS AND REMEDIES

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

22. GOVERNING LAW

This Agreement is governed by the law in force in Western Australia.

23. JURISDICTION

Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and courts of appeal from them.

24. TRUSTS

If the Grantee is a trustee of a trust (Trust):

- (a) the Grantee enters into and is bound by this Agreement both in its personal capacity and in its capacity as trustee of the Trust; and
- (b) the Grantee represents and warrants to the Grantor that, in respect of the Trust:
 - (i) it is the sole trustee of the Trust;
 - (ii) it is a validly appointed trustee of the trust and no action is proposed to remove it as trustee of the Trust;
 - (iii) there has not been any contravention of or non-compliance with any of the terms of the trust deed constituting the Trust;
 - (iv) it has a right of indemnity out of the assets of the Trust for all liabilities incurred by it under this Agreement and the assets of the Trust are sufficient to satisfy that right; and
 - (v) this Agreement does not conflict with the operation or terms of the Trust or the trust deed;
 - (vi) it has full and valid power and authority under the Trust to enter into this Agreement and to carry out the transactions contemplated by this Agreement (including all proper authorisations and consents);
 - (vii) it enters into this Agreement and the transactions evidenced by it for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust; and
 - (viii) it will not, without the Department's consent (not to be unreasonably withheld or delayed), resign, allow the appointment of a substitute or additional trustee, terminate the trust or vary the terms of the Trust or resettle the Trust.

EXECUTED BY THE PARTIES

Signed for and on behalf of the State of Western Australia, by the delegate of the Chief Executive Officer of the Department of Transport

.....

Signature

Name

In the presence of

.....

.....

Signature of Witness

Name of Witness

[EXECUTION CLAUSE FOR GRANTEE]

.....

Signature

Insert office or position held (e.g., Chief Executive Officer, Chairperson, Treasurer, Secretary, Manager, etc)

Full Name

In the presence of

.....

.....

Signature of Witness

Name of Witness

SCHEDULE 1

Item 1

(a) Grantee:

Australian Company Number (if applicable):

Australian Business Number (if applicable):

Incorporation Number (if applicable):

Registered for GST?

Program Location:

(b) Grant Funds Amount: up to a total amount ofset out as below.

Grant Details:

Item	Amount
XXXX	Up to \$
XXXX	Up to \$

(c) Progressive Payments and Progress Status Reports (Example)

Date	Milestone	Item	\$ (Ex GST)
DDMMYYYY	Execution of the Funding Agreement	Milestone 1 payment – Establishment costs Signed Funding Agreements Agreed timeline and reporting schedule	% of grant
	Vehicle/s purchased, staff appointed, project commenced	Project Establishment Report	

	Beneficiaries participating in 6 steps to get their licence	Participant Data	
	Completion and submission by Grantee, and acceptance by the Department, of Milestone Report and relevant Program Documentation for specified periods	Milestone 2 payment – Operating costs	% of grant
	Beneficiaries participating in 6 steps to get their licence	Participant Data	
	Completion and submission of a Final Report, relevant Program Documentation for specified periods and financial statement	Milestone 3 payment – Final acquittal payment	% of grant

(d) Program Documentation

Includes:

- The Beneficiary Consent Form set out in Schedule 4.
- Extracts or samples of logbooks issued by the Department to record supervised driving hours.
- Details of beneficiaries participating in the Program including name, date of birth and learner's permit number.
- Audited statement of grant monies received and spent (excluding GST) broken down by the item categories in the table under part (b) to this Schedule.

Program Documentation must be provided as part of the Participant Data and/or Milestone Report via SmartyGrants and/or via email at Access.Equity.Program@transport.wa.gov.au.

(e) Special Conditions: Additional Reporting Requirements

In the event of damage of any kind, whether sustained in an accident or through other means, involving the Vehicle the following reporting requirements are to be observed:

- No admission of liability is to be made.
- Exchange details with other parties (if necessary).
- Report the incident to the Department immediately.
- All reportable crashes must be reported to Western Australia Police Force, either at the nearest police station or through the online reporting facility available at www.crashreport.com.au.

(f) Completion Date:

Item 2 Nominated Officer Name and Contact Details

(a) Department's Nominated Officer

Name of Officer:

Position Title:

Postal Address

Physical Address:

Email:

(b) Grantee's Nominated Officer:

Name of Officer:

Position Title:

Postal Address

Physical Address:

Email:

SCHEDULE 2

Details of the Grantee's Driving Access & Equity Program (Grantee's Program)

SCHEDULE 3

Grant Vehicle Use Policy

1 Use of Vehicle

The Grantee agrees that the use of the Vehicle and costs associated with fuel must comply with the terms of this Agreement. The Department will monitor the use of the Vehicle and fuel costs. The Grantee acknowledges that any failure to comply with the terms of this Agreement and the Grantee's obligations under this Schedule 3 will constitute an Event of Default.

2. No Private Use

The Grantee agrees the Vehicle (and accompanying fuel costs) must be used for the Grantee's Program only. No private or personal use of the Vehicle, including fuel, is permitted and if fuel is used for personal use, the amount used must be reported and reimbursed to the Department immediately.

3. Garaging of Vehicle

The Grantee agrees the Vehicle must at all times be garaged or stored in a safe, secure location when not being used for the Grantee's Program.

4. Driving of Vehicle

The Grantee agrees the Vehicle will at all times be driven in a safe and appropriate manner within the speed limit and obeying all road rules and laws.

5. Notification of Incidents

The Grantee agrees any incidents involving the Vehicle including any damage to or caused by the Vehicle, must be reported in accordance with Special Conditions: Additional Reporting Requirements as set out in Item 1(e) of Schedule 1 of this Agreement and to the Department as soon as practicable after the incident.

6. Traffic Infringements

The Grantee agrees any traffic infringements incurred through use of the Vehicle for the Grantee's Program are the responsibility of the driver of the Vehicle and the Department accepts no responsibility for any traffic infringements incurred through use of the Vehicle.

7. Sale of Vehicle


The Vehicle cannot be sold or transferred without prior written approval of the Department of Transport.

8. Modification of Vehicle

The Grantee agrees the Vehicle will not be altered, modified or have accessories installed within it without the prior approval of the Department.

SCHEDULE 4

Permission form (see clauses 5.7 and 5.10 (b))

	Government of Western Australia Department of Transport	RL13 Participant Consent
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When blank, this form is classed as OFFICIAL, when completed, this form is classed as OFFICIAL SENSITIVE
Complete and submit this form via your Objective Connect folder to allow Department of Transport to access the participant's licensing record.

MY PERSONAL DETAILS	AGREEMENT																
<p>YOU MUST BE AN AUSTRALIAN CITIZEN OR PERMANANT RESIDENT TO PARTICIPATE IN THIS PROGRAM</p> <p><input type="checkbox"/> I am an Australian Citizen <input type="checkbox"/> I have Australian Permanent Residency</p> <p>FAMILY NAME <input type="text"/></p> <p>FIRST NAME/S <input type="text"/></p> <p>ADDRESS WHERE I LIVE <input type="text"/></p> <p>SUBURB/TOWN <input type="text"/></p> <p>STATE <input type="text" value="W A"/> POST CODE <input type="text"/></p> <p>DATE OF BIRTH <input type="text"/> / <input type="text"/> / <input type="text"/></p> <p>PHONE NUMBER <input type="text"/></p> <p>EMAIL ADDRESS <input type="text"/></p> <p>LEARNER'S PERMIT NUMBER <input type="text"/></p> <p>DO YOU IDENTIFY AS ABORIGINAL OR TORRES STRAIT ISLANDER? <input type="checkbox"/> Aboriginal but not Torres Strait Islander origin <input type="checkbox"/> Torres Strait Islander but not Aboriginal origin <input type="checkbox"/> Both Aboriginal and Torres Strait Islander origin <input type="checkbox"/> Neither Aboriginal nor Torres Strait Islander origin</p>	<p>PART A I want to do the Driving Access and Equity program (making it easier for people to get a driver's licence). I agree that:</p> <ol style="list-style-type: none">1. The organisation that got the grant will give this paper to the Department of Transport.2. The Department of Transport will use my information from this paper to organise the Driving Access and Equity program. They will also see if the program helps me to get a driver's licence. <p>PART B Optional - you can say yes or no for this extra part. I agree that I give permission that: The Department of Transport will use my information from this paper when they tell people about the Driving Access and Equity program in reports and on Facebook and Instagram. For example, they might use:</p> <ol style="list-style-type: none">(a) my first name;(b) photographs. For example a photo of me with L or P plates or sitting in the driver's seat of a car, but not a photo on my learner's permit or driver's licence; and(c) the name of the region or town where I live. <p>I say yes: <input type="checkbox"/> I say no: <input type="checkbox"/></p>																
<p style="text-align: center;">REASON FOR SUPPORT/REFERRAL</p> <p>PLEASE TICK ALL THAT APPLY</p> <table border="1"><tr><td>No access to a car</td><td><input type="checkbox"/></td></tr><tr><td>No access to suitable supervisor</td><td><input type="checkbox"/></td></tr><tr><td>No access to a driving instructor</td><td><input type="checkbox"/></td></tr><tr><td>Receiving Centrelink payments</td><td><input type="checkbox"/></td></tr><tr><td>Job Seeker</td><td><input type="checkbox"/></td></tr><tr><td>Remote community resident</td><td><input type="checkbox"/></td></tr><tr><td>Referral from other agency</td><td><input type="checkbox"/></td></tr><tr><td>Low income</td><td><input type="checkbox"/></td></tr></table> <p>REFERRING AGENCY <input type="text"/></p> <p>GRANT ORGANISATION NAME <input type="text"/></p>	No access to a car	<input type="checkbox"/>	No access to suitable supervisor	<input type="checkbox"/>	No access to a driving instructor	<input type="checkbox"/>	Receiving Centrelink payments	<input type="checkbox"/>	Job Seeker	<input type="checkbox"/>	Remote community resident	<input type="checkbox"/>	Referral from other agency	<input type="checkbox"/>	Low income	<input type="checkbox"/>	<p style="text-align: center;">SIGNATURE</p> <p>MY SIGNATURE <input type="text"/></p> <p>DATE SIGNED <input type="text"/> / <input type="text"/> / <input type="text"/></p> <p style="text-align: right; font-size: small;">Last updated: 03.07.2024</p>
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