

TfNSW NSW Livestock Loading Scheme Assessor Platform

Terms of Use – Assessors

Assessor details

Full name: _____

Note; you must be an assessor approved by TfNSW to conduct Assessments under the NSWLLS, before you can be approved to use the NSWLLS Assessor Platform.

Declaration

I acknowledge that I have read and understood:

1. the attached terms and conditions for the NSWLLS Assessor Platform;
2. my Assessor Agreement;
3. the Assessor Guide for the NSWLLS; and
4. the Business Rules for the NSWLLS,

and agree to be bound by them.

<p>SIGNED by the ASSESSOR in the presence of:</p> <p>_____</p> <p>Signature of Witness</p> <p>_____</p> <p>Print Name</p>	<p>_____</p> <p>Assessor's Signature</p> <p>_____</p> <p>Print Name</p> <p>_____</p> <p>Date</p>
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Terms of Use for the TfNSW NSW Livestock Loading Scheme Assessor Platform

1. BACKGROUND

1.1. Terms constitute contract

Transport for NSW (“**TfNSW**”) operates the NSWLLS whereby each Assessor has been approved by TfNSW to conduct Assessments under the NSWLLS. TfNSW has developed the NSWLLS Assessor Platform to enable Assessors participating in the NSWLLS to electronically submit Assessment Data to TfNSW online, with the aim of improving data integrity and security, and increasing the efficiency and standard of customer services in a mobile environment.

These terms and conditions (“**Terms**”) apply to your use of the NSWLLS Assessor Platform as an Assessor. These Terms apply in addition to the Assessor Agreement, Assessor Guide and Business Rules.

If you consider there is any inconsistency between any requirement in these Terms, the Assessor Agreement, the Assessor Guide, the Business Rules or any other document comprising or referred to in these Terms:

- 1.1.1. you must notify TfNSW of the alleged inconsistency;
- 1.1.2. TfNSW will, acting reasonably, direct you as to which document is to apply and the requirements you are to follow; and
- 1.1.3. you agree to comply with the reasonable directions of TfNSW given under clause 1.1.2.

1.2. Terms constitute contract

Your acceptance of these Terms (including any changes to them) constitutes a contract between you and TfNSW. By signing these Terms, you accept and agree to these Terms.

1.3. Changes to the NSWLLS Assessor Platform and these Terms

- 1.3.1. Given the nature and purpose of the NSWLLS, TfNSW may make changes to the NSWLLS Assessor Platform, including to its features and functionality, from time to time. TfNSW will use reasonable endeavours to notify you (including but not limited to email notification and/or publishing a notice on the NSWLLS Webpage) of any changes that TfNSW believes is necessary for your use of the NSWLLS Assessor Platform. You acknowledge that you may not be notified of all changes to the NSWLLS Assessor Platform made by TfNSW from time to time.
- 1.3.2. These Terms have been developed specifically for the NSWLLS by TfNSW. TfNSW may make changes to these Terms during the NSWLLS from time to time by publishing the updated Terms on the NSWLLS Webpage or on the NSWLLS Assessor Platform, or by notifying you in any other way.
- 1.3.3. Any changes to these Terms will be effective on the date the updated version is published (“**Change Effective Date**”). You will be taken to have accepted the changes to the Terms if, from the applicable

Change Effective Date, you continue to use the NSWLLS Assessor Platform during the NSWLLS.

2. APPROVAL TO USE the NSWLLS ASSESSOR PLATFORM

2.1. All users must be accredited

Only Assessors approved by TfNSW to conduct Assessments under the NSWLLS may use the NSWLLS Assessor Platform.

2.2. The accreditation process

You must:

- 2.2.1. be approved as an Assessor by TfNSW;
- 2.2.2. provide complete, accurate and current information when registering for approval as a user of the NSWLLS Assessor Platform; and
- 2.2.3. agree to receive electronic messages from TfNSW regarding the NSWLLS, NSWLLS Assessor Platform and other relevant information.

3. USE OF the NSWLLS ASSESSOR PLATFORM

3.1. Permitted use

You must only use the NSWLLS Assessor Platform:

- 3.1.1. for the purposes of submitting Assessment Data to TfNSW in connection with conducting Assessments for which you are accredited; and
- 3.1.2. in compliance with these Terms and with all laws and regulations (including but not limited to all Applicable Laws, applicable to you and the use of the NSWLLS Assessor Platform).

3.2. Records, Systems, Processes and Equipment

TfNSW is not responsible for providing or maintaining any hardware, software or other systems, equipment or processes necessary for you to connect with or use the NSWLLS Assessor Platform. TfNSW is not responsible for any costs or expenses incurred by you in connecting with or using the NSWLLS Assessor Platform including any connection charges.

3.3. Logins and passwords

- 3.3.1. TfNSW will provide you with your user ID (“**User ID**”) following your attendance at the induction workshop arranged by TfNSW. You will also be required to set up a password (“**Password**”) which, along with the User ID, are required to access the NSWLLS Assessor Platform. Your User ID will be recorded by TfNSW for security and audit reasons against all information submitted by you.
- 3.3.2. To protect the security of the NSWLLS Assessor Platform and your account, you must:
 - 3.3.2.1. keep your Password secure and separate from your User ID;

- 3.3.2.2. ensure that your Password is not used by or available to any other person; and
 - 3.3.2.3. log out of the NSWLLS Assessor Platform when you are not actively using the NSWLLS Assessor Platform.
 - 3.3.3. If you know or suspect that there is or has been any breach of security, unauthorised disclosure or use of your Password, you must immediately:
 - 3.3.3.1. change your Password (to the extent that you are able to); and
 - 3.3.3.2. notify TfNSW immediately of such occurrence or suspicion by email to: livestockscheme@rms.nsw.gov.au
- 3.4. You acknowledge and agree to TfNSW recording any NSWLLS Assessor Platform activity, including submission of any information, for security and audit reasons.

3.5. Ceasing use

If you cease to be authorised by TfNSW to conduct Assessments or use the NSWLLS Assessor Platform, you must:

- 3.5.1. immediately cease using the NSWLLS Assessor Platform; and
- 3.5.2. notify TfNSW immediately by email to: livestockscheme@rms.nsw.gov.au

3.6. Limitations and restrictions

You must not, directly or indirectly:

- 3.6.1. copy, translate, adapt, modify, alter, create derivative works, de-compile, or reverse-engineer the NSWLLS Assessor Platform or any part of it;
- 3.6.2. remove, change or obscure any copyright or other intellectual property notice or disclaimer in or in relation to the NSWLLS Assessor Platform;
- 3.6.3. use the NSWLLS Assessor Platform in any way:
 - 3.6.3.1. which results in you or TfNSW breaching, or being involved in a breach of the law;
 - 3.6.3.2. which is inconsistent with TfNSW's obligations as a government agency in relation to ensuring that road users operate safely and within NSW and national road laws;
 - 3.6.3.3. which interferes with the proper operations of the NSWLLS Assessor Platform;
 - 3.6.3.4. which introduces any virus or harmful code that is designed to allow unauthorised control of, or adversely affect a computer, network or data;
 - 3.6.3.5. for benchmarking or competitive purposes; or

- 3.6.3.6. for availability, performance or vulnerability testing; or
- 3.6.4. attempt to do any of the above as set out in this clause 3.6.

4. Rules and Directions

You must promptly comply with any guidelines or directions issued by TfNSW as set out in the Assessor Guide from time to time in relation to the NSWLLS Assessor Platform.

5. ASSESSMENT DATA

5.1. Entering Data

When using the NSWLLS Assessor Platform, you must ensure that:

- 5.1.1. you have all the necessary authorisations and consents to submit the information to TfNSW for use in accordance with these Terms and the NSWLLS; and
- 5.1.2. the information submitted:
 - 5.1.2.1. is complete, correct and accurate, and
 - 5.1.2.2. complies with all Applicable Laws, the Assessor Agreement, the Assessor Guide, the Business Rules and these Terms.

5.2. Other information

- 5.2.1. You must not submit any information during your usage of the NSWLLS Assessor Platform that is not required under the NSWLLS to properly use the NSWLLS Assessor Platform (for example, any images containing information that is not required) ("**Other Information**").
- 5.2.2. If you provide any Other Information contrary to clause 5.2.1, TfNSW makes no promises in relation to the use and storage of such Other Information. TfNSW disclaims (to the maximum extent permitted by law) all liability (in contract, tort including negligence, under statute or otherwise arising) to you or any other person in respect of any direct or indirect loss, damage, claim, action, liability, proceeding, demand, cost, charge, outgoing or expense ("**Losses**") sustained by you or any other person arising out of or in connection with the Other Information.

5.3. Audit

You agree and acknowledge that:

- 5.3.1. TfNSW may from time to time audit your compliance with these Terms;
- 5.3.2. you will promptly give TfNSW or its nominee access to relevant NSWLLS records held by or under your control upon request; and
- 5.3.3. you will provide all reasonable assistance to TfNSW or its nominee to conduct the audit under this clause 5.3.

6. AVAILABILITY of the NSWLLS ASSESSOR PLATFORM

You acknowledge that:

- 6.1. given the nature and purpose of the NSWLLS, the NSWLLS Assessor Platform may become unavailable at any time or your use of the NSWLLS Assessor Platform may be interrupted due to unscheduled downtimes (or any other reason); and
- 6.2. if this occurs, you must follow the guidelines for manual processing of Assessments as outlined in the Assessor Guide to conduct any Assessments during the time your usage of the NSWLLS Assessor Platform is affected.

7. PROPRIETARY RIGHTS

- 7.1. All media, information, trade marks, logos and other material provided through the NSWLLS Assessor Platform are owned by TfNSW or its licensors and must not be reproduced or dealt with in any way without TfNSW's prior written consent, except for copyright material which may be used in accordance with TfNSW's copyright notice available at <http://www.rta.nsw.gov.au/copyright.html>
- 7.2. TfNSW owns (or has the rights to) and will continue to own (or have the right to) all intellectual property rights in the NSWLLS Assessor Platform, including all improvements, enhancements or modifications to it. Your rights to use the NSWLLS Assessor Platform are limited to the rights expressly granted under these Terms. All other rights of TfNSW are reserved.
- 7.3. You agree to grant to TfNSW a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence to use, sub-license, reproduce and adapt any information submitted by you in your use of the NSWLLS Assessor Platform. (Note: Please refer to clause 11 in relation to information submitted by you in your use of the NSWLLS Assessor Platform that is Personal Information.)

8. BREACH

8.1. You acknowledge that:

- 8.1.1. damages alone for any breach of these Terms by you may not be an adequate remedy to compensate TfNSW for such a breach; and
- 8.1.2. in addition to any other remedy available at law, TfNSW is entitled to an injunction, specific performance or other equitable relief for any threatened or actual breach of these Terms.

9. LIABILITY

9.1. Disclaimer and indemnity

- 9.1.1. Subject to clause 9.2 and to the extent permitted by law, TfNSW disclaims all warranties whether express, implied or otherwise, including warranties or assurances in relation to the NSWLLS Assessor Platform's quality, performance, availability, accuracy, completeness or timeliness.
- 9.1.2. To the maximum extent permitted by law, under no circumstances will TfNSW accept any liability (in contract, tort including negligence, under statute or otherwise arising) to you or any other person in respect of any Losses sustained by you or any other person arising out of or in connection with your use of the NSWLLS Assessor Platform.

- 9.1.3. You must indemnify and keep indemnified TfNSW against all liability, damage, claims, causes of action, costs and expenses, and Losses directly or indirectly arising from or in connection with your use or misuse of the NSWLLS Assessor Platform and/or any Other Information.

9.2. Exclusion of terms

- 9.2.1. If the Australian Consumer Law (ACL) which is Schedule 2 of the Competition and Consumer Act 2010 (Cth) or similar legislation applies to these Terms at any time (which is not admitted by TfNSW), nothing in these Terms excludes or limits any liability TfNSW may have under the ACL or similar legislation that TfNSW is not permitted by law to exclude or limit, including liability to a "consumer" (as that term is defined in the ACL). TfNSW limits any liability it has to such a consumer for breach of a consumer guarantee under the ACL or similar legislation to resupplying the services in respect of which the breach occurred.
- 9.2.2. Except as otherwise expressly stated in these Terms, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise relating to the NSWLLS Assessor Platform and to these Terms are excluded to the fullest extent permissible at law.

10. TERMINATION

You acknowledge and agree that TfNSW may:

- 10.1. suspend or terminate your access to the NSWLLS Assessor Platform if you fail to comply with these Terms; or
- 10.2. suspend or cease to provide access to the NSWLLS Assessor Platform to you for a period or indefinitely, or terminate your access to the NSWLLS Assessor Platform, for any reason at any time.

11. PRIVACY

- 11.1. You must comply with all Privacy Laws and the privacy requirements set out in the Assessor Agreement in relation to any Personal Information collected, processed, used, stored or disclosed in relation to the NSWLLS Assessor Platform.
- 11.2. If you fail to comply with your obligations set out in clause 11.1, TfNSW may suspend or terminate your use of the NSWLLS Assessor Platform.
- 11.3. TfNSW may at its discretion, for the purposes of promoting the NSWLLS (including the availability of Assessments), use and disclose to the public your details.

11.4. NSWLLS Assessor Platform data collection and usage:

TfNSW may collect and use data through your use of the NSWLLS Assessor Platform. The data collected may include:

- 11.4.1. Assessment Data;
- 11.4.2. information about the Driver that you are conducting the Assessment on (including the Driver's licence number and signature); and

- 11.4.3. your User ID and your Password;
- 11.4.4. your usage of the NSWLLS Assessor Platform; and
- 11.4.5. your agreement to the terms and conditions of the Assessment and your signature.

The purposes such data may be collected and may be used for may include:

- 11.4.6. issuing a Certificate of Completion, NSWLLS Driver Card and/or driver survey to Drivers;
 - 11.4.7. reporting and audit purposes in connection with the NSWLLS.
- 11.5. Subject to clause 5.2 and to the extent any Personal Information is collected by TfNSW as part of its collection of user data and/or these Terms, TfNSW will treat such Personal Information in accordance with Privacy Laws and TfNSW's latest privacy statement ("**Privacy Statement**"). Our Privacy Statement explains why we are collecting your and any other person's Personal Information and how we will use and manage it in accordance with the *Privacy and Personal Information Act 1998* (NSW), and, where relevant, the *Health Records and Information Privacy Act 2002* (NSW). You can obtain a copy of our Privacy Statement at www.transport.nsw.gov.au/privacy-statement or call us on 13 22 13 to request a copy.

12. GENERAL

- 12.1. You must not assign, sub-contract or otherwise transfer any or all of your rights or obligations granted under these Terms except with the prior written consent of TfNSW.
- 12.2. Nothing in these Terms will create, or be deemed to create, a partnership, the relationship of principal and agent or the relationship of employer and employee between TfNSW and yourself. You must not represent yourself as an agent of TfNSW and you will have no authority to enter into any obligations on behalf of TfNSW or to bind TfNSW in any way.
- 12.3. Any provision of these Terms that becomes or is held to be invalid is only invalid to that extent, without invalidating or affecting the remaining provisions of these Terms or the validity of that provision.
- 12.4. Any failure by TfNSW to exercise any right under these Terms does not operate as a waiver and the single or partial exercise of any right by TfNSW does not preclude any other or further exercise of that or any other right by TfNSW.
- 12.5. These Terms are governed by and construed in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of New South Wales.

13. DEFINITIONS

In these Terms:

"Applicable Laws" means all laws relating to the conducting of Assessments and the NSWLLS (including these Terms), including but not limited to the HVNL.

"Assessment" means the conduct of an assessment by an Assessor to determine whether a Driver has met the requirements under the NSWLLS for issue of a NSWLLS Driver Card.

Transport for NSW

27-31 Argyle Street Parramatta NSW 2150

W transport.nsw.gov.au | email: livestockscheme@rms.nsw.gov.au | ABN 18 804 239 602

“Assessment Data” means all data required to book, cancel and process an Assessment.

“Assessor” means an individual who has been approved by TfNSW in accordance with the Business Rules to conduct Assessments under the NSWLLS.

“Assessor Agreement” means the NSW Livestock Loading Scheme Driver Assessment Assessor Agreement between you (as an Assessor) and TfNSW.

“Assessor Guide” means the *NSW Livestock Loading Scheme Driver Learning and Assessment Assessor Guide for the NSW Livestock Loading Scheme* as approved by TfNSW and published on the NSWLLS Webpage from time to time.

“Business Rules” means the Business Rules of the NSWLLS as approved by TfNSW and published on the NSWLLS Webpage from time to time.

“Driver” means a person who has applied or wants to apply to undertake an Assessment under the NSWLLS, and who requests or has engaged the Assessor to provide the Assessment.

“Eligible Vehicle” means a Heavy Vehicle eligible for enrolment under the NSWLLS, as defined in section 4.1 of the Business Rules.

“Heavy Vehicle” means a vehicle or a combination that includes a vehicle with gross vehicle mass or aggregate trailer mass of more than 4.5t, not including rolling stock, as defined under the HVNL.

“HVNL” means the Heavy Vehicle National Law (NSW) No 42a, Heavy Vehicle (Adoption of National Law) Act 2013 (NSW) and Heavy Vehicle (Adoption of National Law) Regulation 2013 (NSW).

“Livestock Vehicle” means an Eligible Vehicle that has been nominated by an Operator and enrolled with TfNSW to operate under the NSWLLS.

“NSWLLS” means the NSW Livestock Loading Scheme pursuant to the *New South Wales Class 3 Livestock Transportation Exemption Notice 2019 (No. 1)*.

“NSWLLS Assessor Platform” means the online platform developed to submit Assessment Data to TfNSW online as part of the NSWLLS.

“NSWLLS Driver Card” means a card issued by TfNSW to authorise a Driver to operate a Livestock Vehicle under the NSWLLS.

“NSWLLS Webpage” means the webpage accessible at <https://www.rms.nsw.gov.au/business-industry/heavy-vehicles/schemes-programs/livestock-loading/index.html>. **“Operator”** means a company or individual who has been granted enrolment by TfNSW to operate Livestock Vehicles under the NSWLLS and who is responsible for controlling and/or directing the use of its Livestock Vehicles.

“Personal Information” has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

“Privacy Laws” means the *Privacy and Personal Information Protection Act 1998 (NSW)*, the *Privacy Act 1988 (Cth)*, any applicable principles, codes of conduct or directions issued under those Acts and all other applicable laws relating to privacy or Personal Information.

For Information Only

Transport for NSW

27-31 Argyle Street Parramatta NSW 2150

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