



Supply Agreement for the supply of [insert  
contract name]

**Contract Number: [insert]**

Crown in right of the State of New South Wales represented  
by NSW Police Force  
ABN 43 408 613 180

and

[insert name of Supplier]  
ABN [insert Supplier's ABN]

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# Agreement

## NSW Police Force Agreement for the [description of the Supply of Goods and/or the provision of Services]

Date [insert the date the last party signs the agreement]

Between the parties	
Principal	The Crown in right of the State of New South Wales represented by the Commissioner of the <b>NSW Police Force</b> of 1 Charles Street Parramatta NSW 2150 ABN 43 408 613 180 ( <b>Principal</b> )
Supplier	[insert suppliers full legal entity, street address and ABN] ( <b>Supplier</b> )
Background	<ol style="list-style-type: none"> <li>1 The Principal wishes to acquire the Deliverables from the Supplier.</li> <li>2 The Supplier has agreed to provide the Deliverables to the Principal, on the terms set out in this Agreement.</li> </ol>
The parties agree that:	<ol style="list-style-type: none"> <li>1 The Supplier must provide the Deliverables in accordance with this Agreement; and</li> <li>2 The Principal must pay to the Supplier the Purchase Price due in accordance with this Agreement.</li> </ol>

# Operative Part

## 1 Definitions and interpretation

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### 1.1 Precedence of documents

This Agreement comprises the following parts:

- (a) clauses 1 to 15 of this Agreement; and
- (b) the Schedules to this Agreement.

To the extent of any inconsistency between any parts of this Agreement, the document higher in the list above will prevail.

### 1.2 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
<b>Agreement</b>	this Agreement for the provision of the Deliverables, comprising of the parts listed in clause 1.1.
<b>Business Day</b>	a day other than a Saturday, Sunday or gazetted public holiday in New South Wales.
<b>Claim(s)</b>	any claim, demand, proceeding or complaint of any nature or kind.
<b>Commencement Date</b>	the date specified in clause 2(a) of this Agreement.
<b>Confidential Information</b>	information that: <ul style="list-style-type: none"><li>(a) is by its nature is confidential;</li><li>(b) is designated by the Principal as confidential;</li><li>(c) is communicated by the Principal to the Supplier as confidential; or</li><li>(d) the Supplier knows or ought to know is confidential, and includes:<ul style="list-style-type: none"><li>(1) the financial, business, and commercial information of the Principal;</li><li>(2) any material which relates to the affairs of a third party;</li><li>(3) information relating to the policies, strategies, practices and procedures of the Principal.</li></ul></li></ul>
<b>Deliverables</b>	the goods or services described in the Supplier’s quote, attached as Schedule 1.

<b>Term</b>	<b>Meaning</b>
<b>Delivery Location</b>	[to be inserted]
<b>Delivery Time</b>	[to be inserted]
<b>Developed Material</b>	any Materials created, written or otherwise brought into existence by or on behalf of the Supplier in the course of performing its obligations under this Agreement, in which subsists newly created Intellectual Property Rights.
<b>Encumbrance</b>	any mortgage, pledge, lien, charge, assignment by way of security, secured interest, title retention arrangement, preferential right or trust arrangement or any arrangement having the same or an equivalent effect. Encumber and Encumbered will be construed accordingly.
<b>Existing Materials</b>	Materials existing at the Commencement Date or otherwise independently created following the Commencement Date which are incorporated with the Developed Materials and other Materials that are provided, or required to be provided, by the Supplier to Principal under this Agreement, but excluding the Developed Materials.
<b>Expiry Date</b>	The date specified in clause 2(b) of this Agreement.
<b>GIPA Act</b>	the <i>Government Information (Public Access) Act 2009</i> (NSW) or such other law as may be in force from time to time which provides for the public to have access to certain information held by the Principal.
<b>Government Agency</b>	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
<b>GST</b>	is defined in clause 8.4.

Term	Meaning
<b>Intellectual Property Rights</b>	all industrial and intellectual property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or any time in the future, and including but not limited to rights in respect of or in connection with copyright, inventions (including patents), formulae, databases, business processes and methods, trade marks, service marks, designs, trade names, business names, company names, domain names, confidential information, trade secrets and know-how and similar industrial and intellectual property rights, whether or not registered or registrable, and includes the right to apply for or renew the registration of such rights;
<b>Insolvency Event</b>	<p>in relation to a person (<b>Relevant Entity</b>):</p> <ol style="list-style-type: none"> <li>1 <b>administration:</b> an administrator, liquidator or provisional liquidator is appointed to the Relevant Entity or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the Relevant Entity;</li> <li>2 <b>winding up:</b> an application or order is made for the winding up or dissolution of the Relevant Entity or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Relevant Entity;</li> <li>3 <b>receivership:</b> a receiver, receiver and manager, trustee, other controller or similar officer is appointed over the assets or undertaking of the Relevant Entity, or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the Relevant Entity;</li> <li>4 <b>debts:</b> the Relevant Entity suspends payment of its debts generally or is unable to pay its debts as and when they fall due or is presumed to be insolvent under applicable Law, or enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;</li> <li>5 <b>ceasing business:</b> the Relevant Entity ceases, or threatens to cease, to carry on business; or</li> <li>6 <b>disposal:</b> disposal of all or substantially all of the Relevant Entity's assets, operations or business (other than a voluntary liquidation for the purpose of amalgamation or reconstruction if a new company assumes all of the Relevant Entity's legal obligations).</li> </ol>
<b>Insurance Notice</b>	a notice of cancellation or any other notice in relation to an insurance policy effected by the Supplier under this Agreement.
<b>Laws</b>	all laws of any jurisdiction in the world including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles and requirements, mandatory codes of conduct, writs, orders, injunctions, judgments and directives or recommendations of Government Agencies.

<b>Term</b>	<b>Meaning</b>
<b>Loss</b>	any loss, liability, damage, expense or cost, including in relation to any Claim(s).
<b>Material</b>	includes documents, hardware, software, goods, information and data stored by any means.
<b>Personal Information</b>	information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.
<b>Personnel</b>	employees, secondees, agents, principals and contractors (who are individuals).
<b>Purchase Price</b>	the amount payable by the Principal in respect of the Deliverables, as specified in the Schedule 2.
<b>Privacy Legislation</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the <i>Privacy and Personal Information Protection Act 1998</i> (NSW); and</li> <li>(b) any legislation (to the extent that such legislation applies to the Principal or the Supplier or any other recipient of Personal Information) from time to time in force in any: <ul style="list-style-type: none"> <li>(1) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and</li> <li>(2) non-Australian jurisdiction (to the extent that the Principal or any Personal Information or the Supplier is subject to the laws of that jurisdiction), affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data;</li> <li>(3) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraph (a) or (b) above, as amended from time to time; and</li> <li>(4) without limiting any of the foregoing paragraphs of this definition, any relevant privacy laws in the Supplier's jurisdiction.</li> </ul> </li> </ul>
<b>Resources</b>	Personnel, facilities, systems, connectivity, software, hardware, equipment, procedures, processes and other necessary resources.
<b>Specifications</b>	the specifications set out in Schedule 1.
<b>Term</b>	the period commencing on the Commencement Date and ending on the Expiry Date, subject to extension in accordance with clause 2(c) or earlier termination.

<b>Term</b>	<b>Meaning</b>
<b>Warranty Period</b>	the period means [insert timeframe] from receipt by the Principal of the Deliverables.
<b>Warranty Services</b>	is defined in clause 10.3(a).
<b>WHS</b>	work health and safety.
<b>WHS Act</b>	the <i>Work Health and Safety Act 2011</i> (NSW).
<b>Worker</b>	has the meaning given to that term in section 7 of the WHS Act.
<b>Workplace</b>	has the meaning given to that term in section 8 of the WHS Act.

### 1.3 Interpretation

- (a) In this Agreement, unless the context otherwise requires:
- (1) words importing the singular include the plural and vice versa;
  - (2) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
  - (3) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
  - (4) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute and a reference to a clause means a reference to a sub clause of that clause;
  - (5) a reference to a party to a document includes that party's successors and permitted assigns;
  - (6) a reference to A\$ and \$ means the lawful currency of Australia;
  - (7) headings and bold type are for the purpose of convenient reference only and do not form part of the Agreement; and
  - (8) the words "including", "such as", "for example" and "particularly" and similar expressions do not imply any limitations.



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## 2 Term

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- (a) This Agreement commences on [INSERT COMMENCEMENT DATE].
- (b) This Agreement expires on [INSERT EXPIRY DATE].
- (c) The Principal may extend this Agreement for [INSERT PERIOD] by notifying the Supplier in writing, at any time prior to the Expiry Date.

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## 3 Supply

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### 3.1 Supply of Deliverables

- (a) The Supplier must provide Principal with the Deliverables:
  - (1) In accordance with the Specifications and the Supplier's warranties set out in clause 10;
  - (2) In accordance with applicable Laws;
  - (3) With the degree of professional skill, care and diligence expected of a competent professional supplier experienced in supplying goods or services of a similar size, scope and nature to the Deliverables;
  - (4) by the Delivery Time;
  - (5) free from defects and Encumbrances.
- (b) The Supplier represents to the Principal that it has the requisite skill, experience, resources and ability to provide the Deliverables in accordance with this Agreement. The Supplier acknowledges that the Principal has entered into this Agreement in reliance on this representation.

### 3.2 Non-exclusive arrangement

The Supplier acknowledges that the Supplier's relationship with the Principal is non-exclusive and the Principal may contract with any third party to supply the Deliverables, or products or services similar to the Deliverables.

### 3.3 Risk

Risk in the Deliverables resides with the Supplier until the Principal takes delivery of the Deliverables at the Delivery Location. The Supplier must obtain a written and signed receipt for the delivery of the Deliverables.

### 3.4 Title to Deliverables

- (a) Title to the Deliverables passes to the Principal on delivery of the Deliverables at the Delivery Location.
- (b) It is a condition of this Agreement that the Deliverables, and all components or parts of them, are free from any Encumbrance at Delivery Time, whether or not payment of the Purchase Price has been made at Delivery Time.

### 3.5 Delivery

- (a) The Supplier must deliver the Deliverables to the Delivery Location, at the Delivery Time. Delivery will not be taken to have occurred unless and until the Principal has signed a delivery receipt for the Deliverables.

- (b) If the Supplier anticipates that it will be delayed in the delivery of the Deliverables, for any reason, the Supplier must give notice to the Principal's Representative immediately upon becoming aware of such delay.
- (c) If the Supplier does not deliver the Deliverables by the Delivery Time (or any revised Delivery Time agreed between the parties), such delay will constitute late delivery or late provision for the purposes of the Service Levels.

### 3.6 Rejection

- (a) If any, or any part, of the Deliverables:
  - (1) have not been ordered by the Principal;
  - (2) do not comply with the Specifications;
  - (3) breach any of the Supplier's warranties set out in clause 10;
  - (4) are not delivered or provided by the Delivery Time;
  - (5) do not match the quality or appearance of the Sealed Sample
  - (6) have any defect (which right to reject may be exercised at any time); or
  - (7) are otherwise unacceptable to the Principal upon delivery or at any time during their intended useful life,those Deliverables will be treated as Non-Conforming Deliverables.
- (b) Without prejudice to any other rights which the Principal may have, the Principal may withhold any money payable or recover any money paid to the Supplier for the Non-Conforming Deliverables.
- (c) If the Principal requires the Supplier to do so, the Supplier must (at the Supplier's own cost):
  - (1) promptly remove the Non-Conforming Deliverables from the Principal's premises; and/or
  - (2) replace the Non-Conforming Deliverables with Deliverables which do meet the relevant standards or Specifications, and which are acceptable to the Principal.

## 4 Conflict of interest

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- (a) The Supplier warrants that, to the best of its knowledge after making diligent inquiry at the date of signing the Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under the Agreement by itself or by any of the Supplier's Personnel.
- (b) The Supplier must inform the Principal immediately of any matter connected with the provision of the Deliverables which could give rise to an actual or potential conflict of interest on the part of the Supplier or the Supplier's Personnel and take such steps as the Principal may reasonably require of the Supplier to eliminate, resolve or otherwise deal with such conflict.

## 5 Modern Slavery Compliance

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- (a) In addition to any other obligation of the Supplier under this Agreement, in performance of its obligations under and in connection with this Agreement, the Supplier will:
  - (1) comply with Modern Slavery Law;

- (2) use reasonable efforts to procure that the Supplier's Personnel and its Supply Chain Participant comply with Modern Slavery Laws;
  - (3) include in its contracts with Supply Chain Participant provisions that are at least as onerous as those set out in this clause 5;
  - (4) have in place, and maintain in place at all times adequate and reasonable policies, controls, procedures and training at its own cost, designed to:
    - (A) prevent, detect, assess, and mitigate the risk; and
    - (B) remediate any instances, of Modern Slavery in its operations and Supply Chain; and
  - (5) notify the Principal promptly of becoming aware, of any actual, alleged or reasonably suspected Modern Slavery in its operations or Supply Chain.
- (b) Notwithstanding any provision of this Agreement, and without prejudice to any of the Principal's accrued rights or any of its right or remedies, the Principal may terminate this Agreement with immediate effect by giving written notice to the Supplier if the:
- (1) Supplier; or
  - (2) Principal has reasonable cause to believe that the Supplier, has breached:
    - (3) this clause 5 and such breach is incapable of being remedied to the satisfaction of the Principal; or
    - (4) any Modern Slavery Law and such breach is incapable of being remedied to the satisfaction of the Principal.
- (c) Notwithstanding any provision of this Agreement, if the Principal terminates this Agreement pursuant to clause 5(b) or any other right of termination, the Supplier will have no claim against the Principal for lack of performance or any loss arising from non-performance under this Agreement.
- (d) For the purposes of this clause:
- (1) **Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.
  - (2) **Modern Slavery Law** means as applicable, the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth)
  - (3) **Supply Chain** means the goods and services (including labour) that contribute to the Supplier's own goods and services, including:
    - (A) goods and services sourced or used by the Supplier from any jurisdiction; and
    - (B) goods and services sourced or used by a Supply Chain Participant in any jurisdiction.
  - (4) **Supply Chain Participant** means, in relation to a business, any organisation or individual involved in the chain of production and provision of particular goods or services to that business.

## 6 Supplier's Personnel

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### 6.1 Qualifications and experience

The Supplier must ensure that Personnel engaged in connection with the supply of the Deliverables (**Supplier's Personnel**), are competent and professional and have the skills, qualifications and experience necessary to ensure full and proper performance of the obligations under this Agreement in accordance with this Agreement and obligations under any separate contract in accordance with that separate contract.

### 6.2 Security

The Supplier acknowledges the inherent need for the Principal, as a law enforcement agency, to maintain strict levels of security in relation to its activities, and the potential for that security to be compromised by inappropriate Personnel being involved in the supply of the Deliverables.

### 6.3 Personnel security checks

- (a) If requested to do so, the Supplier must provide to the Principal:
- (1) accurate information about the identity, qualifications, job history and character of each of the Supplier's Personnel; and
  - (2) accurate information about the identity, qualifications, job history and character of each of the manufacturer's Personnel where any part of the Deliverables are manufactured by persons other than the Supplier;
  - (3) accurate information about the identity, qualifications, job history and character of each of the cartage contractor's Personnel where the Deliverables are transported by persons other than the Supplier; and
  - (4) a list of any of the Supplier's Personnel and the Personnel of any manufacturer or cartage contractor used by the Supplier with actual or proposed access to the Principal's sites or Confidential Information.
- (b) The Supplier consents, or will procure the consent of the Supplier's Personnel if required, to the Principal:
- (1) investigating whether any of the Supplier's Personnel or Personnel of any manufacturer or cartage contractor used by the Supplier have a criminal record; and
  - (2) conducting such other investigations as the Principal may consider appropriate in relation to any of the Supplier's Personnel or Personnel of any manufacturer or cartage contractor used by the Supplier who may carry out any work in connection with the supply of the Deliverables.
- (c) Before any person carries out any work in connection with the supply of the Deliverables, the Supplier must:
- (1) obtain from that person any consent that is necessary to enable the Principal to conduct the investigations described in clause 6.3(b); and
  - (2) receive written notice from the Principal confirming that the person has passed the investigations described in clause 6.3(b) and providing approval for that person to carry out work in connection with the supply of the Deliverables.
- (d) If the requirements of clause 6.3(c) are not satisfied, unless the Principal agrees otherwise, the Supplier must, to the full extent permitted by Law:
- (1) ensure that person does not carry out any work in connection with the supply of the Deliverables; and
  - (2) provide a replacement for that person as soon as reasonably possible.

- (e) The Supplier must:
- (1) promptly notify the Principal if the Supplier becomes aware of:
    - (A) any change in the qualifications, job history or character of any of the Supplier's Personnel; or
    - (B) any other matter,  
that may adversely affect the suitability of any of the Supplier's Personnel to carry out work in connection with the supply of the Deliverables; and
  - (2) obtain any necessary consent from the relevant Personnel to enable the Supplier to inform the Principal of the matters referred to in clause 6.3(e)(1).
- (f) Any investigation by the Principal under this clause 6.3 will not:
- (1) constitute waiver of any breach of this Agreement; or
  - (2) affect the Supplier's obligations and its sole responsibility for the performance of this Agreement and any separate contract.

#### **6.4 Removal of Supplier Personnel by Principal**

The Principal may require the Supplier to withdraw any one or more of the Supplier's Personnel from the supply of the Deliverables, by written notice to the Supplier and without the need to provide reasons. If the Principal gives the Supplier a written notice (Notice) requiring any one or more of the Supplier's Personnel to be withdrawn from the supply of the Deliverables, the Supplier must immediately, to the full extent permitted by Law:

- (a) comply with the Notice;
- (b) provide a replacement personnel acceptable to the Principal;
- (c) ensure that the relevant person withdrawn from the supply of the Deliverables does not carry out any work in connection with the supply of the Deliverables;
- (d) ensure that the relevant person withdrawn from the supply of the Deliverables does not have access to any information in connection with the supply of the Deliverables; and
- (e) ensure that all Specifications, other documentation and resources (if any) given to the relevant person withdrawn from the supply of the Deliverables to enable the relevant person to supply the Deliverables, are returned to the Supplier.

## **7 Information and Resources provided by Principal**

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### **7.1 Information**

The Principal will make available to the Supplier, at appropriate times, information and documents relevant to the supply of the Deliverables. Such information may include:

- (a) briefs to define the Principal's requirements;
- (b) programs to set out the key dates and locations for the supply of the Deliverables; and
- (c) cost parameters applicable to the supply of the Deliverables.

### **7.2 Disclosure log**

The Supplier acknowledges and agrees that the Principal may disclose information about this Agreement in accordance with the Principal's obligations under the GIPA Act, including making certain information about this Agreement publicly available in any disclosure log of contracts the Principal is required to maintain.

### 7.3 Access to information

- (a) The Supplier must, within 5 Business Days of receiving a written request by the Principal to do so, provide the Principal with immediate access to the following information contained in records held by the Supplier:
- (1) information that relates directly to the supply of the Deliverables pursuant to the Agreement;
  - (2) information collected by the Supplier from members of the public to whom it provides, or offers to provide, the Deliverables pursuant to the Agreement; and
  - (3) information received by the Supplier from the Principal to enable it to supply the Deliverables pursuant to the Agreement.
- (b) For the purposes of clause 7.3(a), information does not include:
- (1) information that discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
  - (2) information that the Supplier is prohibited from disclosing to the Principal by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
  - (3) information that, if disclosed to the Principal, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.
- (c) The Supplier must provide copies of any of the information in clause 7.3(a), as requested by the Principal, at the Supplier's own expense.
- (d) Any failure by the Supplier to comply with any request pursuant to clauses 7.3(a) or 7.3(c) will be considered a breach of an essential term and will allow the Principal to terminate the Agreement by providing notice in writing of its intention to do so with the termination to take effect 5 Business Days after receipt of the notice. Once the Supplier receives the notice, and if it fails to remedy the breach within the said 7 Business Day period, to the satisfaction of the Principal, then the termination will take effect at the expiry of the said 5 Business Day period.
- (e) Nothing in clause 7.3(d) derogates from any other remedy or remedies that may be available to the Principal in respect of a breach of this Agreement by the Supplier.

### 7.4 Consultation

- (a) The Principal will take reasonably practicable steps to consult with the Supplier before providing any person with access to information relating to the Agreement, in response to an access application under the GIPA Act, if it appears that:
- (1) the information:
    - (A) includes Personal Information about the Supplier's Personnel;
    - (B) concerns the Supplier's business, commercial, professional or financial interests; or
    - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Supplier; or
    - (D) concerns the affairs of a government of the Commonwealth or another State (and the Supplier is that government);
  - (2) the Supplier may reasonably be expected to have concerns about the disclosure of the information; and
  - (3) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.

- (b) If, following consultation between the Principal and the Supplier, the Supplier objects to disclosure of some or all of the information, the Supplier must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 Business Days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of the information, the Principal will take into account any objection received by the Supplier.
- (d) If the Supplier objects to the disclosure of some or all of the information but the Principal nonetheless decides to release the information, the Principal must not provide access to that information until it has given the Supplier notice of the Principal's decision and notice of the Supplier's right to have that decision reviewed.
- (e) Where the Principal has given notice to the Supplier in accordance with clause 7.4(d), the Principal must not provide access to the information:
  - (1) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
  - (2) where any review of the decision duly applied for is pending.
- (f) The reference in clause 7.4(e)(1) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

## 7.5 Privacy

- (a) This clause 7.5 applies to any Personal Information collected, used, disclosed, transferred or otherwise handled by the Supplier in the course of supplying the Deliverables, or otherwise in connection with this Agreement.
- (b) If the Supplier collects, uses, discloses, transfers or otherwise handles Personal Information to which this clause 7.5 applies, the Supplier must comply with, and must ensure that the Supplier's Personnel comply with:
  - (1) all applicable Privacy Legislation; and
  - (2) any of the Principal's privacy policies notified to the Supplier from time to time.
- (c) Without limiting paragraph (b), the Supplier must:
  - (1) only use Personal Information to which this clause 7.5 applies to the extent necessary to supply the Deliverables in accordance with this Agreement;
  - (2) not disclose Personal Information to which this clause 7.5 applies to any other person without the express, prior written authority of the Principal, or (subject to subclause (4) below) as expressly required by Law;
  - (3) establish, maintain and enforce appropriate policies and procedures, and associated access controls and other technological measures, to ensure that Personal Information to which this clause 7.5 applies is only accessible to those Supplier's Personnel who require such access for the purpose of performing their duties of engagement;
  - (4) without limiting subclause (3) above, ensure that none of the Supplier's Personnel who have access to any Personal Information to which this clause 7.5 applies use, disclose, transfer or retain such Personal Information except to the extent necessary to perform their duties of engagement;
  - (5) co-operate with any requests or directions of the Principal concerning the storage, security, use and disclosure of Personal Information to which this clause 7.5 applies, or the rights of individuals to access and correct such Personal Information;
  - (6) notify the Principal as soon as reasonably practicable if the Supplier becomes aware that a disclosure of Personal Information to which this clause 7.5 applies

may be required by Law (including under the applicable Privacy Legislation), and, prior to any such disclosure, if requested by the Principal:

- (A) assist the Principal in obtaining a written legal opinion, from a reputable law firm or senior counsel nominated by the Principal (and for which the Principal pays), confirming that the disclosure is required by Law; and/or
  - (B) assist the Principal to prevent or limit such disclosure;
- (7) ensure that any of the Supplier's Personnel who are required to deal with Personal Information to which this clause 7.5 applies are made aware of the obligations in this clause 7.5 and, if requested by the Principal, confirm that such Supplier's Personnel have signed written undertakings to the Supplier (in a form acceptable to the Principal) to comply with the obligations in this clause 7.5;
  - (8) without limiting any of the Supplier's obligations under this clause 7.5, or otherwise under this Agreement, not do any act or engage in any practice that would breach any Privacy Legislation, or which, if done by or engaged in by the Principal, would be in breach of any Privacy Legislation applicable to the Principal ;
  - (9) as soon as reasonably practicable notify the Principal if it becomes aware of a breach of this clause 7.5; and
  - (10) on the termination or expiry of this Agreement for any reason, destroy or otherwise deal with any Personal Information to which this clause 7.5 applies in accordance with the directions of the Principal.

## 7.6 Confidentiality

- (a) The Supplier must not disclose to a third party without the Principal's prior written consent (which will not be withheld if the disclosure is otherwise required by law), any Confidential Information which is:
  - (1) supplied or made available by the Principal to the Supplier, or otherwise obtained by the Supplier, in relation to the supply of the Deliverables; or
  - (2) brought into existence by the Supplier for the purpose of supplying the Deliverables.
- (b) The Supplier must:
  - (1) take or cause to be taken all precautions necessary to maintain secrecy and confidentiality and prevent disclosure of Confidential Information; and
  - (2) without limiting clause 7.6(b)(1), where necessary, obtain confidentiality agreements in a form satisfactory to the Principal from the Supplier's employees, agents and subcontractors.
- (c) The Supplier must not advertise, publish or release to the public or any unauthorised person:
  - (1) Confidential Information; or
  - (2) other information concerning this Agreement, any separate contract, the supply of the Deliverables or the Principal's operations,without the Principal's prior written consent.
- (d) The Principal will not withhold its consent if the information is legally required to be produced.
- (e) The onus of proving that any Confidential Information was published, released or disclosed to an authorised person rests with the Supplier.



## 7.7 Resources

- (a) The Principal will provide any resources listed in the Specifications, in accordance with the terms and conditions set out in the Specifications.
- (b) The Supplier must:
  - (1) not use the Principal's Resources other than for the purposes of supplying the Deliverables;
  - (2) not part with possession, nor create or allow the creation of any Encumbrance over any of the Principal's Resources;
  - (3) keep the Principal's Resources in good and substantial repair and condition, having regard to their condition at the beginning of the service period;
  - (4) not modify the Principal's Resources;
  - (5) promptly inform the Principal of any loss, destruction or damage to any of the Principal's Resources; and
  - (6) comply with any instruction of the Principal for the forwarding or disposal of any damaged Principal's Resources.
- (c) The Supplier must indemnify the Principal for any loss or destruction of, or damage to any of the Principal's Resources:
  - (1) caused by a breach of this Agreement or a separate contract by the Supplier or any of the Supplier's Personnel;
  - (2) caused by any unlawful or negligent act or omission of the Supplier or any of the Supplier's Personnel; or
  - (3) while in the possession of the Supplier; andany amount payable in respect of such loss, destruction, or damage is a debt due and payable by the Supplier to the Principal immediately on demand.
- (d) The Supplier's liability under clause 7.7(c) will be reduced proportionately to the extent that a breach of this Agreement, or the negligence of, the Principal or its Personnel contributed to the liability.
- (e) If the Principal's Resources are no longer required for the purposes of this Agreement, or any separate contract, the Principal's Resources must be returned to the Principal as soon as practicable unless other arrangements are agreed by the parties.

## 8 Payment

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### 8.1 Entitlement to Purchase Price

- (a) In consideration of the supply of the Deliverables, the Principal must pay the Supplier the Purchase Price, in accordance with this clause 8. The Purchase Price is deemed to include provision for all costs and expenses incurred by the Supplier in complying with all its obligations under this Agreement including all packaging, transport, duties, taxes or levies (except GST), insurance, loading, unloading and storage costs, up to the Delivery Location.
- (b) The Principal has no liability to the Supplier to pay for the Deliverables until those Deliverables have been delivered to the Delivery Location, in accordance with the Specifications and the terms of this Agreement, free of any Encumbrance.
- (c) Where payment is made for Deliverables which have not been delivered in accordance with the requirements outlined this Agreement then any such payment must be held by the Supplier as trustee for the Principal until the Deliverables are provided in accordance with

this Agreement or the unencumbered title to the Deliverables has been given to the Principal.

## 8.2 Invoices and time for payment

- (a) Within 10 Business Days and for services: after the end of each calendar month or for one off supply: after supply of the Deliverables or for milestone payments: after an event triggering a requirement for payment, the Supplier must submit to the Principal a valid tax invoice for all Deliverables provided to the Principal in the previous calendar month. The tax invoice must:
- (1) specify the amount of the Purchase Price in respect of the Deliverables;
  - (2) provide details of when the Deliverables were ordered and the date of delivery or supply of such Deliverables;
  - (3) specify the amount of GST payable in respect of the supply of the Deliverables; and
  - (4) consolidate all Deliverables provided by the Supplier under the Agreement in the prior month.
- (b) The Principal must pay the Supplier the Purchase Price within 30 Business Days after receipt of a tax invoice where:
- (1) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
  - (2) the invoice is set out as an itemised account in accordance with the requirements of clause 8.2(a); and
  - (3) the invoice is accompanied by documentary evidence that signifies that the Principal has accepted the Deliverables in accordance with this Agreement.
- (c) The Supplier must provide any further details in regard to an invoice that are reasonably requested by the Principal from the Supplier.
- (d) The Supplier must not invoice the Principal (and the Principal is not required to pay) for any Deliverables that are not correctly invoiced within 3 months of the later of date on which the Supplier: provides the relevant Deliverables to the Principal; and is first entitled to invoice for such Deliverables in accordance with the terms and conditions of this Agreement.

## 8.3 Set-off

The Principal may deduct from amounts due by the Principal to the Supplier any amounts due from the Supplier to the Principal whether under, or in connection with, this Agreement or otherwise.

## 8.4 Goods and Services Tax (GST exclusive prices)

- (a) A reference in this clause 8.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this Agreement, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- (d) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Agreement the amount of the reimbursement will be net of any input

tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

## 9 Liability and indemnity

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### 9.1 Supplier's indemnity

(a) The Supplier is liable for, and indemnifies the Principal against, all Loss incurred or suffered by the Principal or Claims made against the Principal, in respect of:

- (1) personal injury to, or the death of, any person;
- (2) loss of, damage to or loss of use of any property, including property of the Principal; or
- (3) any wrongful or negligent act or omission by or on behalf of the Supplier, including breach of this Agreement by the Supplier;

arising out of or in connection with the supply or use of the Deliverables, including any failure to supply the Deliverables in accordance with the Specifications and the terms of this Agreement.

(b) Any amount in respect of which this indemnity applies is a debt due from the Supplier to the Principal payable immediately on demand being made for it.

### 9.2 Cap on liability

(a) The Supplier's indemnity under clause 9.1 is capped at [insert].

(b) The Principal's liability arising under or in connection with this Agreement or any Separate Contract is capped at [insert].

### 9.3 Reduction in liability

The Supplier's liability under clause 9.1 will be reduced proportionately to the extent that a breach of this Agreement or any Separate Contract by, or the negligence of, the Principal or its Personnel contributed to the liability.

### 9.4 Alternative supplier

In the event that the Supplier fails, either wholly or partially, to supply the Deliverables to the Principal in accordance with this Agreement or any separate contract, the Principal may retain any third party or third parties, at the Supplier's cost, to supply the Deliverables. Any such payment made to a third party or third parties is a debt due from the Supplier to the Principal payable immediately on demand being made for it.

## 10 Supplier's warranties

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### 10.1 The Supplier warrants that:

(a) all Deliverables will be of merchantable quality and fit for the purposes for which the Deliverables are to be used by the Principal, the purposes made known by the Principal or represented to the Supplier on or before the date of this Agreement or the purposes for which the Deliverables are normally used;

- (b) if the Deliverables have a limited shelf life, the packaging will clearly show the expiry dates of the Deliverables and the shelf life remaining for the Deliverables, at the time of delivery to the Principal, will be reasonable having regard to the requirements of the Principal for the use of those Deliverables;
- (c) the Deliverables will be new, free from defects in design, material and workmanship and will comply fully with the Specifications;
- (d) where the Deliverables are supplied by reference to a sample or style guide, the Deliverables will correspond with that sample or style guide;
- (e) title to the Deliverables will pass to the Principal on delivery of the Deliverables to the Principal, free of all Encumbrances and claims for retention of title in respect of the Deliverables and all components of the Deliverables;
- (f) it has conducted its own analysis and review of information provided by the Principal and has satisfied itself as to the accuracy, completeness and fitness for purpose of all information provided by the Principal upon which it places reliance;
- (g) the supply of the Deliverables by the Supplier and the use of the Deliverables by the Principal will not infringe the Intellectual Property Rights of any third party;
- (h) it will supply the Deliverables and perform its obligations under this Agreement in accordance with, and will at all times comply with, all applicable Laws;
- (i) it has all licences, authorisations, consents, approvals and permits required by applicable Laws in order to provide the Deliverables and perform its obligations under this Agreement;
- (j) the Deliverables and the supply of the Deliverables will comply with the Law in Australia and any State in which they are to be delivered; and
- (k) it has the skill, competence, capability and qualifications to supply the Deliverables.

## 10.2 Warranties separate

- (a) Each representation and warranty made under or contemplated by this Agreement is to be construed independently of the others and is not limited by reference to any other representation or warranty.
- (b) The Supplier acknowledges that the Principal, in entering into this Agreement, is relying on the warranties and the representations made by the Supplier in this Agreement.

## 10.3 Warranty Period for Items

- (a) Without affecting the application of clause 10.1, the warranties given by the Supplier in clauses 10.1(a), 10.1(c) and 10.1(d) of this Agreement will apply for the duration of the Warranty Period, notwithstanding that this Agreement or any Separate Contract may have expired or been terminated.
- (b) During the Warranty Period, the Supplier must, on demand by the Principal, immediately remedy or correct, including by replacement of the relevant Deliverable (**a Remedy**), any breach of any such warranties, at the Supplier's cost and to the reasonable satisfaction of the Principal, regardless of whether or not such breach has at that time resulted in a failure of the Deliverables (**Warranty Services**). Any amount owing to the Principal under this clause is a debt due from the Supplier to the Principal payable immediately on demand being made for it.
- (c) Notwithstanding clauses 3.4 and 3.5, title to any Remedy shall immediately pass to the Principal upon completion of the relevant Warranty Services to which the Remedy relates.

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## 11 Supplier's insurances

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### 11.1 Minimum requirements

- (a) From the Commencement Date and for the duration of the Term (or such longer period as Principal may require) the Supplier must hold and maintain the following insurances:
- (1) broad form public liability insurance for at least [\$20,000,000];
  - (2) broad form product liability insurance for at least [\$10,000,000];
  - (3) broad form professional liability insurance for at least [\$10,000,000];
  - (4) workers' compensation insurance and any and all other insurance as the Supplier may be required to maintain under any law applicable to the Supplier; and
  - (5) such other insurances required by the Principal.
- (b) The insurances referred to in clause 11.1(a) must:
- (1) be in terms satisfactory to the Principal;
  - (2) cover the Principal's and the Supplier's respective rights, interests and liabilities to third parties, including the liability of the Supplier to the Principal;
  - (3) be for at least the amount specified by the Principal for any one occurrence and unlimited in the aggregate annually as to the number of occurrences; and
  - (4) be valid for the term of this Agreement (or such longer period as Principal may require).

### 11.2 Evidence of insurance

Whenever so requested by the Principal in writing, the Supplier must within 10 Business Days provide, or procure provision of, evidence, to the Principal's reasonable satisfaction, that the Supplier or its subcontractors or assignees (as applicable) has obtained and maintained insurance required under clause 11.1 in accordance with this Agreement.

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## 12 Indemnity

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- (a) The Supplier must defend at its cost and fully indemnify (and must keep fully indemnified) Principal and any agents and/or employees of Principal against all actions, Claims and Loss which may be brought against or suffered or incurred by Principal or any agents and/or employees of Principal arising out of, or in connection with (whether directly or indirectly) a breach of this Agreement by the Supplier.
- (b) The Supplier's liability to indemnify Principal and its agents and/or employees under this Agreement shall be reduced proportionally to the extent that any act or omission of those indemnified caused or contributed to the liability, loss, damage, injury or failure.

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## 13 Intellectual Property Rights

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### 13.1 Ownership of Developed Material

- (a) The Supplier acknowledges and agrees that Principal owns the Intellectual Property Rights in all Developed Material including, without limitation, all material developed by the Supplier in the provision of the Deliverables.

- (b) On acceptance of the Deliverables by Principal in accordance with this Agreement and after the final payment has been made in accordance with clause 8:
- (1) the Developed Material will be the sole and exclusive property of Principal; and
  - (2) the Supplier hereby assigns, as at the date of such acceptance, all of its right, title and interest in all Intellectual Property Rights (including, without limitation, as a present assignment of future copyright) in the Deliverables to Principal.
- (c) The Supplier must do all things necessary to vest title in all Intellectual Property Rights in the Deliverables to Principal without the need for further consideration.
- (d) The Supplier acknowledges that Principal may exploit, adapt, license or otherwise use the Intellectual Property Rights in the Deliverables.

### 13.2 Existing Material

- (d) The Supplier is the owner or licensee of all Intellectual Property Rights in any Existing Material and Principal acknowledges that no Intellectual Property Rights in or to that Existing Material are assigned to Principal.
- (e) On acceptance of the Deliverables by Principal in accordance with this Agreement, the Supplier grants and must ensure that any relevant third parties grant to Principal a worldwide, royalty free, non-transferable licence to use, reproduce and adapt for its own use all those Intellectual Property Rights in the Existing Material to the extent required to utilise the Developed Material in accordance with the ownership rights granted in clause 13.1

### 13.3 Breach of Intellectual Property

The Supplier must notify Principal in writing as soon as practicable if it becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Developed Material, including the Deliverables, and must provide all reasonable assistance to Principal in defending against such infringement.

### 13.4 No promotion or advertising

The Supplier must not refer to any goods or services which it provides, or has provided, to the Principal in order to promote or advertise any of the Supplier's goods or services, without the prior written approval of the Principal.

### 13.5 Police insignia

- (a) The Supplier must not use police insignia, as defined in section 203(8) of the *Police Act 1990* (NSW) (**Police Act**), unless the Supplier:
- (1) is authorised by a licence granted to the Supplier by the Commissioner of the NSW Police Force; or
  - (2) is otherwise authorised by the Commissioner of the NSW Police Force.

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## 14 Termination

### 14.1 Termination by Principal for insolvency or breach

The Principal may terminate the whole or any part of this Agreement immediately by giving notice to the Supplier if the Supplier is in breach of this Agreement, or an Insolvency Event occurs in respect of the Supplier.

## 14.2 Termination by Principal for convenience

- (a) The Supplier acknowledges and agrees that the Principal may, at any time at its absolute discretion and without providing reasons, terminate this Agreement, whether or not the Supplier is in default, by written notice to the Supplier.
- (b) If the Principal terminates this Agreement in accordance with clause 14.2(a), the Supplier's sole right and remedy will be to require payments in accordance with clause 14.4(b).

## 14.3 Supplier's obligations on termination

If the Supplier receives a termination notice given under this clause 14, the Supplier must, (unless the notice states otherwise), immediately discontinue the supply of the Deliverables.

## 14.4 Supplier's waiver on termination

If the Principal terminates this Agreement:

- (a) the Supplier waives all Claims and Loss in respect of any uncompleted portion of the provision of the Deliverables; and
- (b) the Supplier's sole right and remedy will be to require the Principal to pay a proper valuation under this Agreement of all amounts due and not previously paid to the Supplier for provision of the Deliverables completed in accordance with this Agreement before the notice of termination.

## 14.5 No right for Supplier to terminate

The Supplier:

- (a) does not have, and expressly waives, any rights it may have to terminate this Agreement; and
- (b) expressly acknowledges that a failure by the Principal to perform any obligation under this Agreement will not entitle the Supplier to terminate this Agreement.

## 14.6 Consequences of termination generally

- (a) The termination of the Supplier's engagement under this Agreement does not affect any of the Principal's other rights or remedies.
- (b) If the Supplier's engagement under this Agreement is terminated under clause 14.1, the Supplier is liable for and indemnifies the Principal against any loss suffered by the Principal as a result of the termination, including any additional costs incurred by the Principal in procuring the completion of any outstanding Deliverables.

## 14.7 Clauses surviving termination

Clauses 7, 9.1, 10, 11.1, 12 and 13 and any other obligations which are expressed to or, by their nature, survive expiry or termination of this Agreement, survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.

## 15 General

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### 15.1 WHS

- (a) In supplying the Deliverables, the Supplier must ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons at the Workplace where the services are supplied.
- (b) In supplying the Deliverables, the Supplier must ensure, so far as is reasonably practicable that:
  - (1) it establishes and maintains safe work practices and safe systems of work;
  - (2) all Personnel supplying the Deliverables are appropriately trained in work health and safety, and the risks associated with supplying the Deliverables; and
  - (3) it otherwise complies with the WHS Laws and all statutory requirements for work health, safety and rehabilitation management.
- (c) The Principal and the Supplier acknowledge and agree that the Supplier has control of:
  - (1) the manner in which the Deliverables are supplied; and
  - (2) all matters arising out of or as a consequence of the supply of or failure to supply the Deliverables that give rise or may give rise to risks to health or safety.
- (d) The Supplier must, prior to supplying any part of the Deliverables undertake an assessment of the WHS risks associated with the supply of the Deliverables and take all reasonably practicable steps to eliminate and minimise all such WHS risks.
- (e) The Supplier must, within the timeframe specified by the Principal, provide to the Principal such information about the operation and maintenance of its WHS systems and procedures as the Principal requires, from time to time, including WHS performance, audit and assessment reports. Any review of the operation or maintenance of the system by the Principal under this sub-clause does not constitute a verification or acceptance by the Principal of the adequacy of the system.
- (f) The Supplier must ensure that it reasonably participates, and that its Personnel reasonably participate, in any investigation carried out by the Principal relating to any Workplace incident notifiable under the WHS Laws in connection with the supply of the Deliverables.
- (g) The Supplier must, so far as is reasonably practicable, consult, cooperate and coordinate the Deliverables with any other person involved in performing work at the Workplace to achieve effective coordination of the services to ensure optimal health and safety risk management and enable the Principal and the Supplier and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.
- (h) If the Supplier breaches its obligations under this clause, the breach will give the Principal the right to terminate this Agreement, in accordance with clause 14.1.
- (i) The Supplier will not be entitled to make a claim against the Principal as a result of or in any way connected with a breach of the Supplier's obligations under this clause 15.1.
- (j) The Supplier indemnifies the Principal, against any cost, expense, loss, damage or other liability suffered or incurred by the Principal to the extent it arises from a breach by the Supplier of this clause 15.1.

### 15.2 Governing law and jurisdiction

- (a) This Agreement is governed by the laws in force in New South Wales.



- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.

### 15.3 Variation

A variation of any term of this Agreement will be of no force and effect unless it is in writing and signed by the parties.

### 15.4 Entire agreement

This Agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### 15.5 Counterparts

This Agreement may be executed in any number of counterparts.

### 15.6 Piggy backing

- (a) If any government agency (as defined in the *Government Sector Employment Act 2013* (NSW)), public body (as defined in clause 6 of the *Public Works and Procurement Regulation 2014* (NSW)) or police service from another jurisdiction within Australia or New Zealand requires the Supplier to supply any of the Deliverables, then the Supplier agrees that it will enter into a separate agreement with that entity on the terms provided in this Agreement, except for necessary changes to reflect that the Deliverables are to be supplied to that other entity.
- (b) The Supplier acknowledges and agrees that the Principal:
  - (1) will not be a party to any separate agreement entered into by the Supplier with another entity pursuant to clause 15.6(a); and
  - (2) will not in any circumstances have any liability to the supplier or to any other party arising from or in connection with the separate agreement.

# Schedule 1

## Specifications

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[To be inserted]

# Schedule 2

## Pricing

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[To be inserted]

Signing page

## Executed as an Agreement

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SIGNED for and on behalf of the Commissioner of the NSW Police Force ABN 43 408 613 180, representing the Crown in right of the State of New South Wales, by

sign here ► \_\_\_\_\_

**Group Director, Strategic Procurement**

**pursuant to the Instrument of Financial Delegation of Authority issued on 2 February 2022 by the Minister for Police, for the purpose of incurring, committing or sanctioning expenditure for the services provided to NSW Police Force as specified in this Agreement.**

**In the presence of:**

sign here ►

\_\_\_\_\_  
Witness

print name

\_\_\_\_\_

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Signed for and on behalf of [insert Supplier name and ABN] in accordance with section 127 of the *Corporations Act 2001*  
by

sign here ► \_\_\_\_\_  
Company Secretary/Director

print name \_\_\_\_\_

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

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