



Master Services Agreement [for the supply of xxxxxxx]

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

Date [insert]

Parties

Name The Crown in right of the State of New South Wales represented by the **NSW Police Force** (ABN 43 408 613 180) (**Principal**)

Address 1 Charles Street, Parramatta, NSW 2150

Fax Number [insert]

Email Address [insert]

Contact [insert]

Name [insert name of Supplier] ABN [insert Supplier's ABN] (**Supplier**)

Address [insert]

Fax Number [insert]

Email Address [insert]

Contact [insert]

Background

- A. The Principal has conducted a procurement process for [insert description]
- B. The Supplier has submitted a tender that has been accepted by the Principal.
- C. The Supplier has agreed to provide the Deliverables to the Principal on the terms set out in this Agreement.

Operative part

1 Definitions and interpretation

1.1 Precedence of documents

(a) In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of

- (1) clauses 1 to 28 of this Agreement;
- (2) the Schedules to this Agreement; and
- (3) any Attachments to this Agreement.

1.2 Definitions

In this Agreement:

Address means a party's address set out in the Parties section of this Agreement.

Agreement means this Agreement and includes any schedules or attachments to it.

Agreement Details means Schedule 1 to this Agreement.

Business Day means a day other than a Saturday, Sunday or gazetted public holiday in New South Wales.

Change has the meaning given to it in clause 14.1.

Change Control Process has the meaning given to it in clause 14.1.

Change Request Proposal has the meaning given to it in clause 14.1(b).

Claim means any claim, demand, proceeding or complaint of any nature or kind.

Commencement Date means the date specified in Item 2 of the Agreement Details.

Confidential Information means information that:

- (a) is by its nature is confidential;
- (b) is designated by the Principal as confidential;
- (c) is communicated by the Principal to the Supplier as confidential; or
- (d) the Supplier knows or ought to know is confidential, and includes:
 - (1) the financial, business, and commercial information of the Principal;
 - (2) any material which relates to the affairs of a third party;
 - (3) information relating to the policies, strategies, practices and procedures of the Principal.

Consequential Loss means any loss recoverable at law (other than loss arising in the usual course of things) which is consequential upon other loss, including:

- (a) loss of income or revenue;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business; and
- (e) a loss of value of any equipment.

Contract Material means all material, other than material created by the Supplier for its own internal administrative purposes, brought or required to be brought into existence by the Supplier, or any subcontractor, in the course of the Supplier's performance of this Agreement, including documents, equipment, information and data stored by any means.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliverables means the goods or services described in the Specifications.

Delivery Location means the location for the delivery of the Deliverables, as specified in Item 11 of the Agreement Details.

Delivery Time means the time for the delivery of the Deliverables, as specified in Item 12 of the Agreement Details.

Deliverables Continuity Plan has the meaning given to it in clause 8.1(a).

Disruption means the occurrence of one or more events which affects the delivery of Deliverables, in whole or in part, to the extent that the whole or any part of the Deliverables cannot be recovered using facilities the Supplier generally uses to provide the Deliverables.

Dispute has the meaning in clause 25(a).

Dispute Notice has the meaning in clause 25(c).

Encumbrance means 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 equivalent effect.

Extension Period is the period specified in Item 4 of the Agreement Details.

Fees means those amounts payable by the Principal under this Agreement for the Deliverables, as set out in or calculated in accordance with the Pricing Schedule.

Force Majeure Event means:

- (a) fire, flood, earthquake, or acts of God; or
- (b) acts of war, terrorism (excluding acts or omissions of the Supplier's Key Personnel), riots, civil disorders or rebellions or revolutions in Australia.

Further Additional Period is the period specified in Item 5 of the Agreement Details

GIPA Act means the *Government Information (Public Access) Act 2009* (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.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Australia.

GST has the meaning given to that term in the GST Law.

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Initial Term it is the period specified in Item 3 of the Agreement Details.

Insolvency Event means in relation to a party (**Relevant Entity**), any one or more of the following:

- (a) **administration**: an administrator, controller, 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 these persons to the Relevant Entity;
- (b) **winding up**: 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;
- (c) **receivership**: 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;
- (d) **debts**: 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 Laws, 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;
- (e) **ceasing business**: the Relevant Entity ceases, or threatens to cease, to carry on business; or
- (f) **disposal**: 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).

Insurance Notice means a notice of cancellation or other notice in relation to an insurance policy affected by the Supplier under this Agreement.

Intellectual Property means any industrial and intellectual property rights throughout the world and for the duration of the rights including:

- (a) any patents, copyright including future copyright, registered or unregistered trademarks or service marks, trade names, brand names, registered or unregistered designs, commercial names, circuit layouts, database rights;
- (b) any inventions, discoveries, processes, methods, trade secrets, know-how, computer software, Confidential Information and scientific, technical and product information;
- (c) the right to apply for any industrial and intellectual property rights; and
- (d) any other similar or analogous rights and any intellectual or industrial rights whether now existing or which come into existence in the future.

Laws means 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.

Loss means any loss, liability, damage, expense or cost, including in relation to any Claim.

Moral Rights means a person's moral rights as defined in the *Copyright Act 1968* (Cth).

Notice means notice under clause 28.1.

Personal Information means 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.

Personnel means employees, secondees, agents, sub-contractors and contractors (who are individuals).

Pricing Schedule means Schedule 5 to this Agreement.

Privacy Legislation means 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:

- (1) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
- (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;
- (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
- (4) without limiting any of the foregoing paragraphs of this definition, any relevant privacy laws in the Supplier's jurisdiction.

Reporting Schedule means Schedule 6 to this Agreement.

Representatives means persons appointed in accordance with clause 2.1.

Resources means Personnel, facilities, systems, connectivity, software, hardware, equipment, procedures, processes and other necessary resources.

Security Requirements means [insert here].

Service Credits means any service credit owed from the Supplier to the Principal, for a failure to meet a Service Level, as set out in the Specifications

Service Levels means the service levels in respect of the Deliverables as set out in the Specifications

Specifications means the specifications set out in Schedule 3 to this Agreement.

Tax means any tax, levy, charge, franchise, import duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Governmental Authority.

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

Term means the Initial Term, any Extension Period and any Further Extension Period (if applicable), subject to termination pursuant to this Agreement, and (to the extent applicable to the performance of the Transition-Out Services or related subject matter) any Transition-Out Period.

Third Party means any person who is not the Supplier, the Supplier's Personnel or the Principal.

Transition-In Schedule means Schedule 2 to this Agreement.

Transition-In Services means the transition-in services to be provided by the Supplier as set out in the Transition-In Schedule.

Transition-Out Schedule means Schedule 4 to this Agreement.

Transition-Out Period means the period specified in Item 6 of the Agreement Details.

Transition-Out Plan means the plan to be developed by the Supplier and approved by the Principal in accordance with clause 9.2.

Transition-Out Services means the transition-out services to be provided by the Supplier as set out in the Transition-Out Schedule.

WHS Act means the Work Health and Safety Act 2011 (NSW).

WHS Laws means:

- (a) Those Acts, regulations, by-laws, orders, awards, proclamations, standards and codes relating to work health and safety (including the WHS Act and WHS Regulation) with respect to the Deliverables;
- (b) The requirements of any authority relating to work health and safety with respect to the Deliverables; and
- (c) Any directions or notices relating to work health and safety issues by any relevant authority or any code of practice or compliance code appropriate or relevant to the Deliverables.

WHS Regulation the Work Health and Safety Regulations 2011 (NSW).

Worker has the meaning given to that term in section 7 of the WHS Act.

Workplace has the meaning given to that term in section 8 of the WHS Act.

1.3 Interpretation

- (a) In this Agreement unless the contrary intention appears:
 - (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 an act, statute, regulation, proclamation, ordinance or by-law includes all acts, statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to an act, or statute

includes all regulations, proclamations, ordinances and by-laws issued under that act or statute;

- (5) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document and includes that party's successors and permitted assigns;
- (6) a reference to a Government Agency includes that Government Agency's successors and organisations, bodies or officials who perform the functions or exercise the powers previously performed or exercised by that Government Agency, from time to time;
- (7) a reference to A\$ and \$, means the lawful currency of the Australia;
- (8) a reference to time, means the time in Sydney, New South Wales, Australia, unless this Agreement expressly requires otherwise;
- (9) headings and bold type are for the purpose of convenient reference only and do not form part of the Agreement.
- (b) In this Agreement, the words "including", "such as", "for example" and "particularly" and similar expressions do not imply any limitations.
- (c) Each representation and warranty contemplated in this Agreement is to be construed independently of the others and is not limited by reference to any other representation or warranty.
- (d) A reference to a party includes that party's administrators, successors and permitted assigns, including any person to whom that party novates any part of this Agreement.
- (e) A reference to a clause is a reference to a clause of this Deed.

2 Parties' Representatives

2.1 Appointment of Representatives

Each party appoints as Representative the person named in Item 1 of the Agreement Details, or another person each party may nominate and notify to the other from time to time, who will serve as the principal contact of the other party with respect to the performance of this Agreement.

2.2 Principal's Representative

The Supplier must communicate directly with the Principal's Representative in relation to the performance of this Agreement.

2.3 Supplier's Representative

- (a) The Principal's Representative may give the Supplier's Representative instructions including in connection with the Supplier's performance under this Agreement and any such instructions are deemed to be given to the Supplier by the Principal.
- (b) The Supplier must ensure that the Supplier's Representative is available to attend on and provide advice to the Principal and the Principal's Representative at all reasonable times during the Term.

3 Term

3.1 Term

- (a) This Agreement commences on the Commencement Date and continues for the period specified in Item 3 of the Agreement Details (**Initial Term**) unless extended in accordance with this clause 3 or earlier terminated in accordance with this Agreement.

- (b) The Principal may notify the Supplier in writing, at any time before the last 2 months of the Initial Term, that it wishes to extend this Agreement for the Extension Period, and if it does so this Agreement is extended by the Extension Period on the terms and conditions set out in this Agreement.
- (c) If the Initial Term is extended by the Extension Period, the Principal may notify the Supplier at any time before the last 2 months of the Extension Period that it wishes to extend this Agreement for the Further Additional Period, and if it does so this Agreement is extended by the Further Additional Period on the terms and conditions set out in this Agreement.

3.2 Transition-Out Period

Notwithstanding:

- (a) the expiry of the Term; or
- (b) the earlier termination of this Agreement,

this Agreement will continue for any Transition-Out Period specified in Item 6 of The Agreement Details, during which the Supplier is required to provide any Transition-Out Services in accordance with this Agreement (**Transition-Out Period**).

4 Deliverables and other services

4.1 Scope of Deliverables

In exchange for payment of the Fees, the Supplier must provide the following:

- (a) The Transition-In Services;
 - (b) The Deliverables; and
 - (c) The Transition-Out Services,
- in accordance with the terms of this Agreement.

4.2 Non-exclusive arrangement

- (a) The Supplier acknowledges and agrees that its relationship with the Principal is non-exclusive and the Principal may contract with any third party to supply the goods or services described in the Specifications (or similar goods or services).
- (b) Nothing in this Deed requires the Principal to guarantee a minimum spend in any period under the Term.

5 Transition-In Services

5.1 General

The Supplier must provide the Transition-In Services in accordance with the requirements set out in the Transition-In Schedule:

- (a) with minimal disruption to the ongoing business and operations of the Principal; and
- (b) by the dates specified in the Transition-In Schedule.

5.2 Management of the Transition-In Services

Without limiting the Supplier's obligations under this Agreement, the Supplier must provide comprehensive project management services in respect of the performance of the Transition-In Services to the Principal's satisfaction, including:

- (a) managing the Transition-In Services and tasks to be provided or performed by the Supplier;
- (b) updating any risks to the timely and successful completion of the Transition-In Services and formulating and implementing measures which remove or minimise those risks;

(c) establishing, managing and participating in any review committees related to the Transition-In Services, as required by the Principal from time to time; and

(d) providing, maintaining, supervising and co-ordinating sufficient Resources to enable timely and successful completion of the Transition-In Services in accordance with the Supplier's obligations under this Agreement.

6 Deliverables

6.1 General

(a) The Supplier must supply the Deliverables to the Principal:

(1) In accordance with the Specifications and the Supplier's warranties set out in clause 19;

(2) In accordance with all applicable Laws;

(3) With the degree of professional skill, care and diligence expected of a competent professional supplier experienced in supplying deliverables of a similar size, scope and nature to the Deliverables;

(4) By the Delivery Time; and

(5) Free from defect.

(b) The Supplier represents to the Principal that it has the requisite skill, experience, resources and ability to supply the Deliverables in accordance with this Agreement. The Supplier acknowledges that the Principal has entered into this Agreement in reliance on this representation.

6.2 Risk

The Supplier acknowledges and agrees that 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 from the Principal to establish the delivery of the Deliverables to the Principal.

6.3 Title to Deliverables

(a) The Supplier acknowledges and agrees that 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, or any component or part of them, must be free from Encumbrance at Delivery Time, whether or not payment of the Fee has been made at Delivery Time.

6.4 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.

6.5 Rejection

(a) If any, or any part, of the Deliverables:

(1) are (or is) not required by the Principal under the Specification;

(2) do (or does) not comply with the Specifications;

(3) breach (or breaches) any of the Supplier's warranties set out in clause 19;

- (4) are (or is) not delivered or provided by the Delivery Time;
- (5) have (or has) any defect (which right to reject may be exercised at any time); or
- (6) are (or is) 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 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.

7 Requirements relating to supply

7.1 Principal's requirements and instructions

(a) The Supplier must supply the Deliverables so as to meet the requirements of the Principal.

(b) The Supplier must take all steps necessary to clarify and confirm the Principal's requirements for the Deliverables.

(c) The Supplier must comply with the Principal's instructions in relation to the supply of the Deliverables.

7.2 Program

(a) If requested by the Principal, the Supplier must provide the Principal within 14 Business Days of the Principal's request, with a detailed program for the supply of the Deliverables with times, date and a schedule of its Resources showing (to the Principal's satisfaction) how it intends to comply with the program.

(b) The Supplier must maintain a planning process to a professional standard to ensure that it is able to meet the Principal's requirements.

7.3 Co-ordination with other suppliers

(a) The Supplier must liaise, consult and co-operate with other consultants and suppliers engaged by the Principal and must integrate the supply of the Deliverables with the goods or services of those other consultants and suppliers.

(b) Notwithstanding clause 7.3(a), the Supplier remains fully responsible for the timely supply of the Deliverables.

7.4 Industrial relations management

The Supplier must manage all aspects of industrial relations in respect of the supply of the Deliverables and otherwise in connection with this Agreement and keep the Principal informed of industrial relations issues which affect or are likely to affect the supply of the Deliverables.

7.5 Work Health and Safety

(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 (in the area under the Supplier's control), including any persons performing work at the Workplace, whether or not engaged by the Supplier.

- (b) The Supplier acknowledges that, in supplying the Deliverables:
 - (1) for the purposes of the WHS Laws, it is the controller or person in charge of the Workplace and as such must ensure compliance with its obligations under WHS Laws in this regard;
 - (2) it will use its best endeavours to ensure, so far as is reasonably practicable the health safety of any persons at the Workplace (in those areas not under the Supplier's control), including any persons performing work at the Workplace, whether or not engaged by the Supplier; and
 - (3) it must comply with the WHS Laws as applicable and do all things necessary to assist the Principal or any of the Principal's Personnel in discharging and complying with the Principal's obligations under the WHS Laws.
- (c) In supplying the Deliverables, the Supplier must ensure, so far as is reasonably practicable, that (subject to Clause 7.5(f)):
 - (1) the Workplace and work environment is free from risks to health and safety;
 - (2) it provides appropriate information, training, instruction and supervision for all persons employed or engaged by it at the Workplace;
 - (3) it establishes and maintains safe work practices and safe systems of work;
 - (4) all plant, equipment, fixtures and fittings that the Supplier manages or controls are properly maintained and are free from risks to health and safety;
 - (5) it engages competent persons to carry out risk audits at its Workplace every two years. Such audits must be undertaken in compliance with good risk management principles and must identify, assess and control any work health and safety risks present at the Workplace;
 - (6) all Personnel supplying the Deliverables are appropriately trained in work health and safety and the risks associated with performing the services required under this Agreement;
 - (7) it will inform the Principal of any changes of any Personnel, corporate structure, management structure or supervisors that may affect the safety of its Personnel or workers in supplying the Deliverables; and
 - (8) it otherwise complies with the WHS Laws and all statutory requirements for work health, safety and rehabilitation management.
- (d) 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.
- (e) The Supplier must, prior to supplying any part of the Deliverables:
 - (1) undertake an assessment of the WHS risks associated with the supply of the Deliverables and identify and take all reasonably practicable steps to implement appropriate WHS risk control measures to eliminate and minimise all such WHS risks; and
 - (2) as required by the Principal, provide the Principal with details of the WHS risk assessment undertaken and evidence of implementation of appropriate WHS risk control measures required under this clause 7.5.
- (f) If the Supplier engages a subcontractor (in accordance with clause 24) or otherwise relinquishes to, or shares with, any person:
 - (1) the management or control of the Workplace; or
 - (2) control over the performance of work associated with the Deliverables,
 - it will ensure that person complies with their statutory obligations under the WHS Laws and the obligations referred to in this clause 7.5.

(g) In order to meet its obligations under this clause 7.5, the Supplier must adopt a work health, safety and rehabilitation management system that demonstrates compliance with all duties under the WHS Laws and supports a systematic approach to managing risks to health and safety posed by the Workplace or the Deliverables, including:

- (1) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks;
- (2) mechanisms to monitor the performance of the system adapt and improve it as necessary;
- (3) WHS policy and objectives;
- (4) organisation structure and responsibilities;
- (5) safe work practices and procedures;
- (6) WHS training and induction;
- (7) WHS auditing and inspection procedures;
- (8) WHS consultation procedures; and
- (9) WHS performance monitoring.

(h) The Supplier will provide to the Principal such information about the operation and maintenance of the system referred to in clause 7.5(g) as the Principal requests. 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.

(i) 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 (**Notifiable incident**) in connection with the supply of the Deliverables that arises during the Term This will include:

- (1) providing the Principal with the names and details of all of the Personnel and workers who were involved in the Notifiable incident;
- (2) ensuring that the Principal has immediate unrestricted access to, and cooperation by, all of the relevant Personnel;
- (3) ensuring that all of the relevant Personnel promptly provide any written or oral statement as is reasonably required by the Principal;
- (4) providing immediate access to the Supplier's records together with the right of the Principal, at its cost, to make copies of such records as the Principal reasonably requires; and
- (5) providing the contact information (including address and telephone number) for all of the Supplier's past and current relevant Personnel and workers involved in or with knowledge of the Incident and in doing so the Supplier must comply with the Privacy Laws.

(j) The Supplier must, within the timeframe specified by the Principal, provide evidence of ongoing compliance with the Supplier's WHS management system referred to in clause 7.5(g), as may be required by the Principal from time to time during the Term. Without limiting the requirements of this obligation, the Supplier must provide the following information on a yearly basis, or as otherwise requested by the Principal from time to time:

- (1) number of lost time injuries;
- (2) working days lost due to injury;
- (3) current status of any injured personnel, damaged property or environmental damage or pollution;
- (4) status of the implementation and outcomes of corrective actions undertaken as a result of WHS inspections and risk assessments; and
- (5) status of WHS management system audits undertaken

(WHS Performance Report).

(k) The WHS Performance Report must be submitted by the Supplier using the WHS Performance Report template, contained in Attachment A.

(l) If required by the Principal, the Supplier must, within the timeframe specified by the Principal, provide reports on WHS inspections, audits, or assessments undertaken during the Term.

(m) 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.

(n) If the Supplier breaches its obligations under this clause 7.5, the breach will give the Principal the right to terminate this Agreement, in accordance with clause 26.1(b).

(o) 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 7.5.

(p) 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 7.5.

7.6 Inspections

The Principal or its nominee(s) may visit any premises in which the Supplier or its Personnel undertake any activity relating to the supply of the Deliverables, at any time. The Supplier must use its best endeavours and must provide all necessary assistance to ensure that the Principal or its nominee(s) has the ability to enter such premises at any time.

7.7 Supplier procedures

(a) Without limiting any other obligations of the Supplier under this Agreement, the Supplier must establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised:

- (1) use, destruction and/or loss of property and materials provided by the Principal in connection with the supply of the Deliverables;
- (2) use or disclosure of the Confidential Information of the Principal; and
- (3) use and access to the Deliverables.

8 Deliverables Continuity

8.1 Deliverables Continuity Plan

(a) Within 30 days of the Commencement Date, the Supplier must develop to the satisfaction of the Principal, a plan setting out the manner in which the Supplier will attempt to ensure continuity of the Deliverables and where such continuity is interrupted, the steps that the Supplier will take in recovering the Deliverables (**Deliverables Continuity Plan**).

(b) The Principal's approval of any Deliverables Continuity Plan may be withheld at its absolute discretion.

(c) The Supplier must provide all reasonable assistance to the Principal to develop a Deliverables Continuity Plan to the Principal's satisfaction and must meet all reasonable costs and expenses associated with the development of a Deliverables Continuity Plan to the Principal's satisfaction.

(d) If requested by the Principal, the Supplier must test the Deliverables Continuity Plan and any alternate facilities proposed in the Deliverables Continuity Plan to demonstrate to the Principal's reasonable satisfaction that the Supplier has the ability to recover from a Disruption and to restore the Deliverables in accordance with the Supplier's obligations under this Agreement.

- (e) The Supplier must bear any costs associated with compliance with this clause 8.

8.2 Disruption

(a) In the event of a Disruption, including where the Principal informs the Supplier that a Disruption has occurred, the Supplier must immediately implement the Deliverables Continuity Plan.

(b) Subject to clause 8.2(c), if the Deliverables, or any part of the Deliverables affected by the Disruption, are not restored by the operation of the Deliverables Continuity Plan, the Supplier must continue to use its best endeavours to minimise any interruption to the Deliverables and to restore the Deliverables in accordance with this Agreement.

(c) If the Deliverables are not restored within 90 days of a Disruption, the Principal may terminate this Agreement.

8.3 Deliverables Continuity Plan updates

(a) The Supplier must keep the Deliverables Continuity Plan and associated plans and processes up to date so that it remains consistent with then current Deliverables and provides for any changes in the provision of the Deliverables or the facilities supporting the provision of the Deliverables.

(b) The Supplier must conduct an operational test of the Deliverables Continuity Plan on the annual anniversary of the date on which it is approved by the Principal under clause 8.1, and provide the Principal with the outcome of that operational test within 5 Business Days of the operational test having been conducted.

(c) The Supplier must implement any reasonable changes to the Deliverables Continuity Plan if requested by the Principal within 10 Business Days of the Principal's request.

(d) The Supplier must consult with the Principal on the updating of its plans and processes to amend the Deliverables Continuity Plan in order to address any major service, audit or security requirements of the Principal or any Governmental Agency.

9 Transition-Out Services

9.1 General

The Supplier must provide the Transition-Out Services for the Transition-Out Period.

9.2 Handover and Transition-Out Services

(a) The Supplier must develop and provide to the Principal a plan for the Transition-Out Services (**Transition-Out Plan**) within 6 months of the Commencement Date, for the Principal's approval.

(b) The Principal's approval of any Transition-Out Plan may be withheld at its absolute discretion.

(c) The Supplier must provide all reasonable assistance to the Principal to develop a Transition-Out Plan to the Principal's satisfaction and must meet all reasonable costs and expenses associated with the development of a Transition-Out Plan to the Principal's satisfaction.

(d) The Supplier must review and update the Transition-Out Plan on the annual anniversary of the date on which it is approved by the Principal, or at such other times as reasonably required by the Principal.

(e) At all times, the Supplier must consult with the Principal regarding the contents of the Transition-Out Plan and must comply with the Principal's reasonable requirements regarding its contents.

(f) The Supplier must:

(1) do everything within its control to ensure that there is minimal disruption to the Deliverables during the Transition-Out Period;

- (2) provide the Transition-Out Services in accordance with this Agreement and the Transition-Out Plan; and
- (3) provide for the orderly handover of the Deliverables to the Principal or to a Third Party nominated by the Principal, in accordance with the Transition-Out Plan.
- (g) The Principal may wind down the provision of the Transition-Out Services, in whole or in part, at any time during the Transition-Out Period by giving the Supplier written notice of such wind-down.

10 Supplier's Personnel

10.1 Qualifications and experience

Without affecting the application of clause 6.1(a)(3), the Supplier must ensure that Personnel engaged in 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.

10.2 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 provision of Deliverables.

10.3 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;
 - (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 any part of 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 or Personnel of any manufacturer or cartage contractor used by the Supplier 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 10.3(b); and
 - (2) receive written notice from the Principal confirming that the person has passed the investigations described in clause 10.3(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 10.3(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 10.3(e)(1).

(f) Any investigation by the Principal under this clause 10.3 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.

10.4 Removal of Supplier Personnel by Principal

(a) 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 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:

(1) comply with the Notice;

(2) provide a replacement acceptable to the Principal;

(3) ensure that the relevant person does not carry out any work in connection with the supply of the Deliverables;

(4) ensure that the relevant person does not have access to any information in connection with the provision of the Deliverables; and

(5) ensure that all Specifications, other documentation and Resources (if any) given to the relevant person to enable the relevant person to supply the Deliverables is returned to the Supplier.

11 Reporting to Principal

11.1 Supplier to keep informed

The Supplier must:

(a) keep itself fully and properly informed of all matters concerning the supply of the Deliverables; and

(b) promptly notify the Principal of all matters of which the Supplier is aware which are material to the Principal's interests.

11.2 Supplier to provide reports

(a) The Supplier must provide reports to the Principal, in accordance with the requirements of the Reporting Schedule.

(b) The Principal may also require the Supplier to provide a report reviewing and giving the Supplier's recommendation in respect of any matter within the scope of the supply of the Deliverables (including those matters on which the Supplier is expressly required to report under this Agreement).

(c) If the Principal requests a report under clause 11.2(b), the Supplier must provide it in writing to the Principal as soon as reasonably practicable and not later than 10 Business Days after the date of the Principal's request.

11.3 Supplier to provide financial statements

(a) If requested by the Principal, the Supplier must provide a copy of the Supplier's financial statements to the Principal no later than 7 Business Days after the date of the Principal's request.

(b) The Principal may at its absolute discretion decide to do either or both of:

(1) perform a half-yearly financial assessment of the Supplier; and

(2) appoint an independent expert to carry out or assist the Principal in carrying out a financial assessment of the Supplier,

and if the Principal requires the Supplier's co-operation, it will notify the Supplier and the Supplier agrees to co-operate and provide such reasonable assistance at the Supplier's expense in relation to any such assessment.

(c) If the results of the independent expert are to the effect that the financial position of the Supplier is unsatisfactory, the Principal may within 3 months of receiving notification of the outcome of the assessment, require the Supplier to attend meetings with the Principal and discuss the issues raised in the assessment and any concerns the Principal may have in relation to those issues. The Supplier must attend any such meetings, co-operate and provide such reasonable assistance at the Supplier's expense in relation to any such assessment.

11.4 Updating of Information

The Principal may, at any time, require the Supplier to update any information previously provided. Where the Supplier is required to provide updated information, the Supplier must provide that updated information to the Principal within 14 Business Days of the date of the Principal's request

12 Audit Rights and Performance Review Rights

12.1 Audit rights

(a) The Supplier must maintain complete records pertaining to the supply of the Deliverables, including but not limited to records relating to Service Levels, the Fees and payments, for the duration of the Term and for 6 months after the Termination or earlier expiration of this Agreement.

(b) The Principal may investigate (or appoint an auditor to investigate) any matter in connection with this Agreement, including costs and pricing matters, and may at any time during the Term and for six months after termination or expiration of this Agreement, audit all files, records and invoices of the Supplier relating to the supply of the Deliverables. The Supplier must provide all reasonable assistance and must meet all reasonable costs and expenses associated with such audits.

(c) If the Principal appoints an auditor in accordance with clause 12.1(b), the auditor will report to the Principal which, at its discretion, the Principal may provide a copy of to the Supplier. The report will determine whether the auditor believes that the Supplier has complied with its obligations under this Agreement, any amount necessary for the Supplier to compensate the Principal for any non-compliance with the Agreement and the obligation to allot Service Credits and any other action reasonably necessary for the Supplier to take in order to comply with this Agreement.

12.2 Performance review rights

- (a) The Supplier acknowledges and agrees that the Principal will measure its performance against the Service Levels.
- (b) The Supplier must comply with its obligations relating to the measurement and reporting of Service Levels and the remedy of breaches of the Service Levels, as outlined in the Specifications.
- (c) The Principal may also undertake or have a third party undertake a review of the Supplier's Performance, from time to time during the Term.
- (d) The Supplier must participate in any performance reviews conducted by the Principal or its nominee and must give all reasonable assistance, including by providing to the Principal all information and dates requested within 14 Business Days of the request.
- (e) The Supplier must implement and comply with the outcomes or indicators of any performance review conducted by the Principal or its nominee under clause 12.2(c), within 28 days of the date of being advised of the outcome of the review.
- (f) If the Principal determines in its absolute discretion that the Supplier is not meeting any or all of its obligations under this Agreement and that steps are required to be undertaken to remedy such non-compliance with its obligations, the Supplier undertakes and agrees that it will use its best endeavours to comply with any reasonable request made by the Principal for rectification steps to be taken within a reasonable time.

13 Information and Resources provided by Principal

13.1 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;
- (c) cost parameters applicable to the supply of the Deliverables.

13.2 Disclosure log

The Supplier acknowledges that the Principal may disclose certain 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.

13.3 Access to information

- (a) The Supplier must, within 7 Business Days of receiving a written request by the Principal, 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 provide the Deliverables pursuant to the Agreement.
- (b) For the purposes of clause 13.3(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 13.3(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 13.3(a) or 13.3(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 7 Business Days after receipt of the notice. Once the Supplier receives the notice, if it fails to remedy the breach within the 7 Business Day period, to the satisfaction of the Principal, then the termination will take effect 7 Business Days after receipt of the notice.

(e) Nothing in clause 13.3(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.

13.4 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 13.4(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 13.4(e) 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.

13.5 Privacy

(a) This clause 13.5 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 13.5 applies, it 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 clause 13.5(b), the Supplier must:

(1) only use Personal Information to which this clause 13.5 applies to the extent necessary to supply the Deliverables in accordance with this Agreement;

(2) not disclose Personal Information to which this clause 13.5 applies to any other person without the express, prior written authority of the Principal, or (subject to clause 13.5(c)(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 13.5 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 clause 13.5(c)(3) above, ensure that none of the Supplier's Personnel who have access to any Personal Information to which this clause 13.5 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 13.5 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 13.5 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 13.5 applies are made aware of the obligations in this clause 13.5 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 13.5;

(8) without limiting any of the Supplier's obligations under this clause 13.5, 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 13.5; 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 13.5 applies in accordance with the directions of the Principal.

13.6 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 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 13.6(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, 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.

13.7 Resources

(a) The Principal will provide any Resources listed in the Specification, in accordance with the terms and conditions of this Agreement.

(b) The Supplier must:

(1) not use the Principal's Resources other than for the purposes of supplying the Deliverables under this Agreement;

(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 by the Supplier or any of the Supplier's Personnel; or

(2) caused by any unlawful or negligent act or omission of the Supplier or any of its Personnel; or

(3) while in the possession of the Supplier; and

(4) any 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 13.7(c) will be reduced proportionately to the extent that a breach of this Agreement by, or the negligence of, the Principal or its Personnel contributed to the liability.

(e) If no longer required for the purposes of this Agreement, the Principal's Resources must be returned to the Principal as soon as practicable, unless other arrangements are agreed by the parties.

14 Change Control Process

14.1 Change Control Process

(a) The Supplier or Principal may request a change to the Deliverables (**Change**) in accordance with the process set out in this clause 14.1 (**Change Control Process**).

(b) If the Supplier or Principal requests a Change under clause 14.1(a), the Supplier must submit to the Principal a written proposal for that Change (**Change Request Proposal**) within 14 Business Days of the request for Change. The Change Request Proposal must specify:

- (1) a detailed description of the proposed Change;
- (2) any amendments to be made to the Agreement, including to the Specifications;
- (3) the impact of any proposed Change on the Deliverables; and
- (4) the price impact of any proposed Change.

(c) The Principal is not obliged to accept a Change specified in a Change Request Proposal and may reject or accept any Change at its absolute discretion.

(d) If the Principal accepts the Change Request Proposal, the Principal and the Supplier will sign the Change Request Proposal and the Change Request Proposal will be deemed to form part of this Agreement from the date the Change Request Proposal is signed by both parties or such other date agreed between the parties.

(e) Unless otherwise agreed in writing, each party must bear its own costs in relation to the Change Control Process.

15 Suspension of Deliverables

15.1 Principal may suspend supply of Deliverables

(a) The Principal may immediately require the Supplier to suspend the performance of any or all of Deliverables under this Agreement, at any time and for any reason by giving Notice to the Supplier.

(b) On receipt of a Notice of suspension under clause 15.1(a), the Supplier must:

- (1) stop work as specified in the Notice;
- (2) take all available steps to minimise its loss resulting from that suspension; and
- (3) continue to supply the Deliverables not affected by the Notice.

(c) If the Principal has required the Supplier to suspend the supply of any or all of the Deliverables under clause 15.1(a), the Principal may at any time give the Supplier a Notice to resume supplying any or all of the Deliverables.

(d) The Supplier must resume supplying the Deliverables specified in the Notice, as soon as practicable after the date of the Notice referred to in clause 15.1(c).

15.2 Costs of suspension

If the Principal suspends the supply of any or all of the Deliverables under clause 15.1:

- (1) the Principal must make payments under clause 16 for Deliverables delivered under this Agreement before the effective date of suspension;
- (2) meet the reasonable costs incurred by the Supplier and directly attributable to the suspension of the Agreement; and
- (3) for abundant clarity, the Supplier is not entitled to any Consequential Loss connected with any suspension under this clause 15.1.

16 Fees

16.1 Entitlement to Fees

(a) In consideration of the supply of the Deliverables, the Principal must pay the Supplier the Fees in accordance with this clause 16. The Fees are deemed to include provision for all costs and expenses incurred by the Supplier in complying with 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 the Deliverables have been delivered to the Delivery Location free of any Encumbrance, in accordance with the requirements of this Agreement. If payment is made by the Principal for Deliverables which have not been delivered in accordance with the requirements of 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.

16.2 Invoices and time for payment

(a) Within 10 Business Days after the end of each calendar month during the Term, the Supplier must submit to the Principal a valid Tax Invoice for the Fees payable for the Deliverables provided in the prior month, in the format required by the Principal.

(b) The Tax Invoice must:

- (1) specify the amount of the Fees;
- (2) include sufficient detail to enable the Principal to verify the invoice and the accompanying information;
- (3) include such other information as may be required by the Principal from time to time; and
- (4) consolidate all Deliverables provided by the Supplier under the Agreement in the prior month.

(c) 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; and
- (2) the invoice is set out as an itemised account in accordance with the requirements of clause 16.2(b).

(d) Where Deliverables have been rejected in accordance with clause 6.5 of this Agreement prior to the submission of a valid Tax Invoice by the Supplier, the Tax Invoice must not specify those Deliverables which have been rejected.

(e) Where Deliverables are rejected in accordance with clause 6.5 of this Agreement after the submission of a valid Tax Invoice, the Principal is not required to pay for those Deliverables.

(f) The Principal may, on reasonable notice, require the Supplier to vary the mode of distribution, recipients, content, form or supporting detail of invoices for all or part of the Deliverables.

(g) The parties acknowledge that electronic receipt or receipt via facsimile in accordance with clause 28.1 is an acceptable means of invoicing under this Agreement.

(h) The Supplier must not invoice the Principal (and the Principal is not required to pay) for any Fees 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 such Fees in accordance with the terms and conditions of this Agreement.

16.3 Reduction in Fees

(a) The parties agree that the Fees will be adjusted to reflect the application of any Service Credits, in accordance with the Service Level requirements. The parties acknowledge and agree that any adjustment on this basis is reasonable and represents the reduced level of value provided to the Principal.

(b) Where Service Credits are incurred in accordance with clause 16.3(a), then:

(1) The Supplier must adjust the next Tax Invoice, or pay to the Principal on demand by the Principal, any Service Credit that corresponds to the failure to meet the Service Level;

(2) The Principal may deduct any Service Credit that corresponds to the failure to meet the Service Level from the Fees or any other amount payable or subsequently becoming payable to the Supplier.

(c) The Supplier acknowledges that:

(1) Its failure to meet a Service Level may have a material adverse impact on the business and operations of the Principal; and

(2) Service Credits represent a reduction in the Purchase Price to reflect the provision by the Supplier of a lower level of service than is required under the Agreement and constitute a reasonable amount by which the parties agree the Purchase Price should be reduced (but do not under any circumstances constitute a penalty).

(d) Nothing in this clause 16.3 derogates from any other remedy or remedies that may be available to the Principal.

16.4 Fee disputes

(a) If there is a bona fide dispute about whether all or any part of the Fees or any other amount contemplated by this Agreement is paid or payable, the Principal may withhold the disputed amount until the dispute is resolved. The Principal agrees to notify the Supplier as soon as possible after forming the view that the Principal bona fide disputes all or any part of the Fees, and in any event, before the Fees are payable to the Supplier.

(b) Clause 25 applies to a dispute of the kind referred to in clause 16.4(a).

(c) If requested to do so by the Principal, the Supplier must promptly provide the Principal with sufficient evidence to substantiate any amount invoiced by the Supplier under this Agreement that is queried or disputed by the Principal.

(d) The Supplier must not, under any circumstances, maintain or allow any other person, entity or subcontractor to maintain a workmen's lien over any of the property of the Principal.

16.5 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.

16.6 GST

(a) A reference in this clause 16.6 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.

16.7 Most favoured customer

The Supplier must within 1 month of each anniversary of the Commencement Date, review the Fees for the Deliverables to ensure that the Fees payable by the Principal are no less favourable than the fees and charges payable by any other customer of the Supplier for parts or services the same as or similar to the Deliverables, regardless of the volume of parts or services being acquired. If the Fees do not comply with this clause 16.7, the Supplier must notify the Principal in writing and immediately revise the Fees accordingly.

17 Benchmarking

17.1 Benchmarking under this agreement

(a) Where the Principal provides the Supplier with a written notice that it would like to carry out a benchmarking exercise under this Agreement in relation to the Fees payable for or the Service Levels applicable to the Services, a benchmarking exercise will be carried out. Benchmarking may be conducted in relation to all or any part of the Services provided by the Principal under this Agreement.

(b) Benchmarking may not be undertaken prior to the first anniversary of the Commencement Date.

18 Liability and indemnity

18.1 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
- (4) 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.

18.2 Cap on liability

(a) The Supplier's indemnity under clause 18.1 is capped at [insert].

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

18.3 Reduction in liability

The Supplier's liability under clause 18.1 will be reduced proportionately to the extent that a breach of this Agreement by, or the negligence of, the Principal or its Personnel contributed to the liability.

18.4 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, the Principal may retain any Third Party, at the Supplier's cost, to supply the Deliverables. Any such payment made to a Third Party is a debt due from the Supplier to the Principal payable immediately on demand being made for it.

19 Supplier's warranties

19.1 Supplier's warranties

The Supplier warrants that:

- (a) Any Deliverables supplied 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 and 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 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 supply 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;
- (k) It will comply with the Service Levels or outcomes or indicators as agreed in this Agreement; and
- (l) It has the skill, competence, capability and qualifications to supply the Deliverables.

19.2 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.

20 Supplier's insurances

20.1 Minimum requirements

(a) From the Commencement Date and for the duration of the Term (or such longer period as may be specified in the Agreement Details), the Supplier must hold and maintain, and must ensure that any subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances:

- (1) broad form public liability insurance;
- (2) broad form product liability insurance;
- (3) broad form professional indemnity insurance;
- (4) workers' compensation insurance;
- (5) any other insurances specified in Item 10 in Schedule 1 (if any); and
- (6) any and all other insurance as the Supplier may be required to maintain under any law applicable to the Supplier.

(b) The insurances must be:

- (1) 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) for at least the amount specified in Item 7, Item 8, Item 9 or Item 10 (if applicable) in Schedule 1 for any one occurrence and unlimited in the aggregate annually as to the number of occurrences; and
- (4) valid for the Term.

20.2 Insurance of assignees

The Supplier must ensure that, on terms satisfactory to the Principal, any assignee under clause 24.2(b) effects and maintains insurance policies on terms similar to those applicable to the Supplier's policies under this Agreement.

20.3 Notices from insurer

The Supplier must ensure that each policy of insurance it effects under this Agreement provides that:

- (a) whenever the insurer gives to, serves on or receives from the Supplier or a Supplier's subcontractor or assignee, an Insurance Notice, it must at the same time inform the Principal in writing that the Insurance Notice has been given to, served on or received from the relevant entity; and
- (b) the insurer may not terminate the insurance policy without giving 10 Business Days' prior written Notice to the Principal.

20.4 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 20.1 in accordance with this Agreement.

21 Intellectual Property

21.1 General principle

(a) Subject to this clause, the title to any Intellectual Property in or in relation to all Contract Material vests on their creation in the Principal.

(b) With respect to any Contract Material, irrespective of where it is created, if requested by the Principal, the Supplier must:

- (1) sign, execute or otherwise deal with; and
- (2) ensure that any third party that creates any Contract Material signs, executes or otherwise deals with,
 - any document which may be necessary to vest all rights in and title to the Intellectual Property in the Contract Material with the Principal.

21.2 Exceptions to general principle

- (a) Clause 21.1 does not apply to:
 - (1) any Intellectual Property rights existing at the Commencement Date, or developed independently of the Supplier's performance of this Agreement; or
 - (2) the Supplier's internal management, financial records and working papers created in the course of the Supplier's performance of this Agreement.

21.3 Licence

- (a) The Supplier grants the Principal a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the right to sublicense) to use any Supplier or third party Intellectual Property rights embodied in any of the Contract Material, for any purpose other than commercial exploitation.
- (b) The Principal grants the Supplier a non-exclusive licence to use the Contract Material solely for the purpose of providing the Deliverables.

21.4 Indemnity

- (a) The Supplier indemnifies the Principal against all Loss arising out of or in connection with a claim by a third party that the Supplier's performance of this Agreement, or the Principal's use of the Contract Material, infringes their Intellectual Property rights.
- (b) For the purposes of this clause, "infringement" includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990*, section 100 of the *Designs Act 2003*, section 183 of the *Copyright Act 1968* and section 25 of the *Circuit Layouts Act 1989* constitute an infringement.

21.5 Moral Rights

- (a) The Supplier:
 - (1) agrees not to enforce any Moral Rights that it may have; and
 - (2) must use its reasonable endeavours to procure from each author their express agreement, that they not enforce any Moral Rights that they may have, presently or in the future, in any Contract Material, including by executing any Moral Rights consents required by the Principal. If the Supplier is unable to procure from an author the consent or agreement referred to above, the Supplier must:
 - (A) notify the Principal as soon as possible; and
 - (B) not use that author's work, items or material without the Principal's approval.
- (b) The Supplier must ensure that any agreement or consent is genuinely given and not obtained by duress or by the making of any false or misleading statement. The Supplier must give the Principal the signed agreements and consents, promptly on request.

21.6 Third Party Rights

Where, in the reasonable opinion of the Supplier, any Contract Material does or is likely to infringe the rights of any third party's Intellectual Property which does or may prevent the Principal from using the Contract Material, the Contractor must, where requested by the Principal and to the Principal's reasonable satisfaction obtain such consents

from the relevant third party that will allow the Principal to use the Contract Material without infringing that third party's Intellectual Property.

21.7 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.

21.8 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.

22 Conflict of interest

(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 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.

23 Modern Slavery compliance

(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 Participants comply with Modern Slavery Laws;
- (3) include in its contracts with Supply Chain Participants provisions that are at least as onerous as those set out in this clause 23;
- (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 23 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 23(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** means internationally recognised exploitative practices including human trafficking, slavery, slavery-like practices, servitude, forced labour, forced marriage, debt bondage, the worst forms of child labour or deceptive recruiting for labour services.
 - (2) **Modern Slavery Law** means any Law that:
 - (A) creates a reporting or due diligence obligation in connection with Modern Slavery; or
 - (B) criminalises or imposes a penalty for Modern Slavery, and that is or becomes applicable to the:
 - (C) Principal, as notified by the Principal to the Supplier in writing; or
 - (D) Supplier.
 - (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.

24 Subcontracting, assignment and novation

24.1 Subcontracting by Supplier

- (a) The Supplier must not subcontract any part of the supply of the Deliverables without the Principal's prior written consent.
- (b) Any consent by the Principal to subcontract any part of the provision of the Deliverables does not relieve the Supplier from any of its liabilities or obligations under this Agreement and the Supplier is liable for any act or omission, default or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default or negligence of the Supplier.
- (c) The Principal may, with reasonable notice to the Supplier and on reasonable grounds, require the Supplier to cease using any subcontractor.

24.2 Assignment and Novation

- (a) The Principal may at any time assign, novate, subcontract or otherwise transfer all or any part of its rights or liabilities under this Agreement without the consent of the Supplier. The Supplier must execute any document reasonably required by the Principal to give effect to the assignment, novation or other transfer.
- (b) The Supplier must not assign its rights under this Agreement without the Principal's prior written consent.

25 Dispute Resolution

- (a) This clause 25 applies to any dispute which arises between the parties in connection with this Agreement, except disputes relating to the construction of this Agreement including this clause 25 (**Dispute**).
- (b) Subject to clause 25(h), a party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with the provisions of this clause 25.
- (c) If a party considers that a Dispute has arisen, it may issue a written Notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (d) The parties must promptly hold good faith discussions between the Supplier's Representative and the Principal's Representative after issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**), and must (subject to privilege) furnish to the other party all information with respect to the Dispute which is appropriate in connection with its resolution.
- (e) If the Dispute has not been resolved within 5 Business Days after commencement of First Level Discussions, the parties must attempt to resolve the Dispute by holding good faith discussion between the Supplier's [insert title] and the Principal's [insert title] (**Second Level Discussions**).
- (f) If the Dispute has not been resolved within 10 Business Days after commencement of Second Level Discussions, either party may pursue its rights and remedies under this Agreement as it sees fit.
- (g) The parties will continue performing their respective obligations under this Agreement while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Agreement.
- (h) Notwithstanding anything in this clause 25, a party at any time may commence court proceedings in relation to a Dispute or Claim arising in connection with this Agreement where that party seeks urgent interlocutory relief.

26 Termination

26.1 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:

- (a) an Insolvency Event in relation to the Supplier occurs;
- (b) the Supplier is in breach of this Agreement and has failed to rectify the breach following a written request to do so by the Principal within seven Business Days;
- (c) the Supplier regularly or habitually commits breaches of this Agreement which when taken in total amount to a material breach of the Agreement or which collectively have a material adverse effect on the operations of the Principal;
- (d) the Supplier breaches [insert number] Service Levels within [insert timeframe];
- (e) in the Principal's view, a conflict of interest exists for the Supplier which prevents the performance of this Agreement;
- (f) the Independent Commission Against Corruption, or similar public body, determines that the Supplier has engaged in corrupt conduct or similar activity;
- (g) in the Principal's reasonable opinion, the Supplier has caused, or may cause, damage or harm to the Principal's or the State of New South Wales' reputation; or
- (h) in the Principal's reasonable opinion, the Supplier has caused or may cause damage or harm to, or otherwise compromise the Security Requirements.

26.2 Termination by Principal for convenience

(a) The Supplier acknowledges and agrees that the Principal may, at any time in its absolute discretion and without providing reasons, terminate this Agreement, by written notice to the Supplier, whether or not the Supplier is in default.

(b) If the Principal terminates this Agreement in accordance with clause 26.2(a), the Supplier's sole right and remedy will be to require payments in accordance with clause 26.4(b)

(c) The Principal will not, in any circumstance, be liable for any Consequential Loss suffered by the Supplier as a result of the termination of this Agreement by the Principal under clause 26.2(a).

26.3 Supplier's obligations on termination

If the Supplier receives a termination notice given under this clause 26, the Supplier must, in respect of the provision of the Deliverables (unless the notice states otherwise), immediately:

- (a) discontinue the supply of the Deliverables; and
- (b) deliver to the Principal all Confidential Information, Resources and Contract Material held by the Supplier and/or its subcontractor in respect of this Agreement.

26.4 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 supply 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 supply of the Deliverables completed in accordance with this Agreement before the notice of termination.

26.5 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.

26.6 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 26.1, 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 the supply of the Deliverables.

27 Force Majeure Events

27.1 Force Majeure Events

(a) A party will not be liable for any failure or delay:

(1) in the case of the Supplier, in the performance or discharge of its obligation to provide the Deliverables pursuant to this Agreement;

(2) in the case of the Principal, in the performance or discharge of its obligations pursuant to this Agreement,

to the extent that such failure or delay is caused, directly or indirectly, by a Force Majeure Event, provided such failure or delay:

- (3) could not have been prevented by reasonable precautions; or
- (4) could not have reasonably been circumvented by the non-performing party by means of alternate sources, workarounds or by using its best endeavours.
- (b) This clause 27.1 does not apply if any Force Majeure Event is caused or contributed to by a breach of this Agreement by the party claiming the Force Majeure Event.

27.2 Notification

A party whose performance or discharge of its obligations referred to in clause 27.1 is affected by a Force Majeure Event must immediately:

- (a) notify:
 - (1) in the case of the Supplier, the Supplier's Representative; and
 - (2) in the case of the Principal, the Principal's Representative; and
- (b) describe in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on that non-performing party's performance or discharge of its obligations under this Agreement.

27.3 Response to a Force Majeure Event

- (a) On the occurrence of a Force Majeure Event, the non-performing party must use best endeavours to continue or resume performance or observance whenever and to whatever extent possible without delay, including by means of alternate sources, workarounds or other means.
- (b) The occurrence of a Force Majeure Event does not limit or otherwise affect the Supplier's obligation to operate the Deliverables Continuity Plan.
- (c) The Supplier agrees that the Principal may terminate this Agreement in whole or in part by notice to the Supplier if any Force Majeure Event (including one which causes or contributes to a Disruption) has the result that the Supplier fails to deliver any other Deliverable for more than 90 days.

28 General

28.1 Notices

- (a) Any notice, demand, consent or other communication given or made under this Agreement must be:
 - (1) clearly readable;
 - (2) signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
 - (3) left at the Address or sent by pre-paid security post (air mail if outside Australia) to the Address or to the Fax Number of the recipient.
- (b) A party may change its Address or Fax Number for the purpose of service by giving notice of that change to the other party in accordance with clause 28.1.
- (c) Any communication will be taken to be received by the recipient:
 - (1) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
 - (2) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the Fax Number of the recipient; and
 - (3) if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of business on the next Business Day.

28.2 Relationship between parties

- (a) Nothing in this Agreement:
 - (1) constitutes a partnership between the parties; or
 - (2) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (1) bind another party; or
 - (2) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

28.3 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

28.4 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

28.5 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.

28.6 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

28.7 Legal expenses and stamp duty

- (a) Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- (b) The Supplier must pay all stamp duty assessed on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.

28.8 Entire agreement

The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.

28.9 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 28.9(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.

28.10 Exercise of discretions

(a) Unless expressly required by the terms of this Agreement, the Principal is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.

(b) The Principal may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement. The Supplier must comply with any such conditions.

28.11 Invalidity

(a) A word or provision must be read down if:

- (1) this Agreement is void, voidable, or unenforceable if it is not read down;
- (2) this Agreement will not be void, voidable or unenforceable if it is read down; and
- (3) the provision is capable of being read down.

(b) A word or provision must be severed if:

- (1) despite the operation of clause 28.11(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (2) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 28.11(b)(1) or (2) applies.

28.12 Waiver

A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

28.13 Survival after termination

Clauses 3.2, 9, 12.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 18, 19, 20 and 21 and any other obligations which are expressed to or, by their nature, continue to apply after expiration or termination of this Agreement.

28.14 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this Agreement.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

List of schedules

Number	Description	Clause reference
1	Agreement details	
2	Transition-In Schedule	5
3	Specification	6, 12.2
4	Transition-Out Schedule	9
5	Pricing Schedule	16
6	Reporting	11.2

Schedule 1 Agreement Details

Item	Clause ref	Term	Details
Item 1	2.1	Representatives:	Principal's representative: Supplier's representative:
Item 2	3.1	Commencement Date	[insert]
Item 3	3.1	Initial Term	[insert]
Item 4	3.1(b)	Extension Period	[insert]
Item 5	3.1(c)	Further Additional Period	[insert]
Item 6	3.2	Transition-Out Period	12 months
Item 7	20.1(b)(3)	Minimum contractual third party public liability insurance	\$20,000,000
Item 8	20.1(b)(3)	Minimum product liability insurance	\$10,000,000
Item 9	20.1(b)(3)	Minimum professional indemnity insurance	\$10,000,000
Item 10	20.1(a)(5) 20.1(b)(3)	Other insurance requirements	[insert]
Item 11		Delivery Location	[insert if applicable]
Item 12		Delivery Time	[insert if applicable]

Schedule 2 Transition-In Schedule

[To be inserted]

Schedule 3 Specifications

[To be inserted]

Schedule 4 Transition-Out Schedule

[To be inserted]

Schedule 5 Pricing Schedule

[To be inserted]

Schedule 6 Reporting

[To be inserted]

Attachment A WHS Performance Report Template

This document sets out the performance indicators for a supplier to the NSW Police Force (NSWPF) to report to NSWPF on its Work Health and Safety (WHS) performance in supplying the deliverables.

The supplier must complete the performance report and provide it to NSWPF monthly.

The purpose of the WHS performance report is to enable the NSWPF to measure the safety performance of the supplier, to determine whether the supplier is adhering to its obligations under the WHS legislation, the commitments made in NSWPF's health & safety policies, the terms and conditions of supply between NSWPF and the supplier and procedures to be met by suppliers to NSWPF and to drive continuous improvement in performance.

Term	Definition
Objectives	Overall WHS goals relating to the NSWPF WHS policy, quantified where practicable, which lead to the achievement of continual improvement.
Performance Indicators	Performance indicators are the means by which an organisation can measure whether objectives are, or are not being met. They are measures such as rates, ratios or indices that reflect how well the health and safety management system or its elements are performing within a business unit or specific operations and in supplying the deliverables.
Targets	Specific performance steps that lead to the achievement of the objectives, quantified where practicable.
WHS legislation	<p>(a) those Acts, regulations, by-laws, orders, awards, proclamations, standards and codes relating to work health and safety (including the <i>Work Health and Safety Act 2011</i> (NSW), <i>Work Health and Safety Regulation 2011</i> (NSW)) with respect to the deliverables;</p> <p>(b) the requirements of any authority relating to work health and safety with respect to the deliverables; and</p> <p>(c) any directions or notices relating to work health and safety issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the deliverables.</p>

Statistic	Definition	Calculation
LTI	Lost time injury – injury or illness that results in time lost from work of one full day or shift, or greater. Excludes journey and recess claims.	No. of LTIs excluding journey and recess claims
LTIFR	Lost time injury frequency rate – indicates how frequently lost time injuries have occurred – LTIs per thousand hours worked	No. of LTIs in previous 12 months x 1,000) / (average no. of employees for previous 12 months x 2,000 hours worked per FTE or man hours in the period).
TRI	Total recordable injuries – the total number of injuries or illnesses certified by a workers compensation medical certificate.	Total number of recordable injuries
TRIFR	Total recordable injury frequency rate – the total number of injuries or illnesses certified by a workers compensation medical certificate per thousand hours worked.	$\frac{TRI \times 1000}{FTE \times 2000 \text{ (or man hours in the period)}}$
NI	An incident that is notifiable to the regulator under Work Health and Safety legislation	
Dangerous Occurrences	Occasions where an incident is not notifiable and there was no injury but there was a risk to a person (s) health and safety	
Employee	Any worker who is directly employed by the supplier or one of its entities	
Contractor	Any worker contracted by the supplier or one of its entities or contracted entities	
GP	General Public – a person who has no contractual connection to any of the above descriptions	

Objectives and Performance Indicators

When setting objectives and performance indicators, consideration is given to the following:

- Terms and conditions of supply between NSWPF and the supplier;
- Public / Community commitments and initiatives;
- Operational WHS risk profiles ;
- Financial and business needs;
- Operational and process related activities;
- Available health & safety performance data e.g. injury statistics, accident rates;
- Audit findings; and
- Views of external interested parties.

The objectives are the overall goals for WHS performance and the objectives are:

- Specific;
- Measurable;
- Achievable;
- Realistic; and
- Timely.

Both short and long term objectives should be set and prioritised against the overall operational needs. Objectives at different levels or within different parts of the organisation should be aligned so they support the overall policy objectives.

NSWPF reviews progress in relation to each objective relevant to the business on a monthly (or quarterly basis) to ensure that they are being achieved.

NSWPF tracks the performance of NSWPF's suppliers, objectives, targets and safety management plans applicable to the business by gathering information from stakeholders.

Where necessary, objectives, targets and programs may be adjusted to take consideration of changes in any of the factors listed above, and the relevant safety management plans.

WHS Monthly Performance Report – Suppliers

	Month	Same month last year	Year to date	Year to date for the month last year	Comments
Number of NI					
Number of LTI: <ul style="list-style-type: none"> Employee Contractor GP 					
LTIFR					
Number of medical treatment injuries					
Number of lost work days					
Number of lost work days per worker					
Number of TRI					
TRIFR					
Number of dangerous occurrences					
Number of WHS audits					
Percentage of planned risk assessments completed					
Percentage of risk assessment recommendations implemented					
Percentage of incident investigation recommendations implemented					
Number of personnel with more than 365 days since safety training					

	Month	Same month last year	Year to date	Year to date for the month last year	Comments
Percentage of personnel with more than 6 months since last safety training					
Number of corrective actions outstanding for more than 90 days					
Days since last WHS consultative meeting/discussion					
Number of notices or orders issued by regulatory body in relation to activities					
Number of workers' compensation claims made					
Motor vehicle collisions					

WHS Status Report

Status of any injured employees, contractors or GP	
Status of rectification work to any property or plant damaged as a result of an incident	
Status of environmental damage or pollution as a result of an incident	
Amount of consultations / coordination with contractors (number of meetings and nature of consultation)	

Signing page

Executed as an Agreement

<p>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:</p> <p>Group Director, Strategic Procurement, pursuant to the Instrument of Financial Delegation of Authority NSW Police Force granted on 2 February 2022 by the Minister for Police and Emergency Services for the purpose of executing contractual agreements on behalf of NSW Police Force, for the procurement of goods or services as specified in this agreement (but not so as to incur any personal liability)</p> <p>..... Print name of witness</p>	<p>..... Signature of delegate</p> <p>..... Signature of witness</p>
<p>SIGNED for and on behalf of [Company Name]</p> <p>In accordance with the Corporations Act 2001 (Cth):- per</p> <p>*section 127(1) - without affixing the Common Seal *section 127(2) -by affixing the Common Seal (* strike out inapplicable provision)</p> <p>OR</p> <p>SIGNED, SEALED and DELIVERED for and on behalf of the Company by its proper officer who hereby certifies and warrants that he/she has the necessary authority to bind the Company herein.</p> <p>..... Signature of Company Secretary</p> <p>..... Print name and address of Company Secretary</p>	<p>[Affix common seal here]</p> <p>..... Signature of Company Director</p> <p>..... Print name and address of Director</p>