

**Annexure 8****Sensitive**Supply Agreement

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**RFQ Number: 001286**

Terms and Conditions of Supply for  
**Strikeforce Parrabell Project**

**Supply Agreement**

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]**  
ACN [insert Supplier's ACN]

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**Sensitive**Supply Agreement

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## Agreement

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

Date [insert]

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

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### Operative Part

## 1 Definitions and interpretation

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### 1.1 Precedence of documents

This Agreement comprises the following parts:

- (a) clauses 1 to 12 of this Agreement; and
- (b) the Schedules to this Agreement.

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

### 1.2 Definitions

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

Term	Meaning
<b>Agreement</b>	this Agreement for the provision of the Deliverables, comprising the documents listed in clause <del>1.11-4</del> .
<b>Business Day</b>	a day other than a Saturday, Sunday or gazetted public holiday in New South Wales.
<b>Claim(s)</b>	any claim, demand, proceeding or complaint of any nature or kind.
<b>Commencement Date</b>	the date specified in clause 2(a) of this Agreement.
<b>Confidential Information</b>	information that: <ul style="list-style-type: none"> <li>(a) is by its nature is confidential;</li> <li>(b) is designated by the Principal as confidential;</li> <li>(c) is communicated by the Principal to the Supplier as confidential; or</li> <li>(d) the Supplier knows or ought to know is confidential, and includes:               <ul style="list-style-type: none"> <li>(1) the financial, business, and commercial information of the Principal;</li> <li>(2) any material which relates to the affairs of a third party;</li> <li>(3) information relating to the policies, strategies, practices and procedures of the Principal.</li> </ul> </li> </ul>

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## Supply Agreement

## 1 Definitions and interpretation

Term	Meaning
<b>Deliverables</b>	the goods or services described in the Supplier's quote, attached as Schedule 1.
<b>Delivery Location</b>	[insert, if applicable, otherwise delete]
<b>Delivery Time</b>	[insert, if applicable, otherwise delete]
<b>Developed Material</b>	any Materials created, written or otherwise brought into existence by or on behalf of the Supplier in the course of performing its obligations under this Agreement, in which subsists newly created Intellectual Property Rights.
<b>Encumbrance</b>	any mortgage, pledge, lien, charge, assignment by way of security, secured interest, title retention arrangement, preferential right or trust arrangement or any arrangement having the same or an equivalent effect. Encumber and Encumbered will be construed accordingly.
<b>Existing Materials</b>	Materials existing at the Commencement Date or otherwise independently created following the Commencement Date which are incorporated with the Developed Materials and other Materials that are provided, or required to be provided, by the Supplier to Principal under this Agreement, but excluding the Developed Materials.
<b>Expiry Date</b>	The date specified in clause 2(b) of this Agreement.
<b>GIPA Act</b>	the <i>Government Information (Public Access) Act 2009 (NSW)</i> or such other law as may be in force from time to time which provides for the public to have access to certain information held by the Principal.
<b>Government Agency</b>	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
<b>GST</b>	is defined in clause 6.4.

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## Supply Agreement

## 1 Definitions and interpretation

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

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### Supply Agreement

#### 1 Definitions and interpretation

Term	Meaning
<b>Material</b>	includes documents, hardware, software, goods, information and data stored by any means.
<b>Personnel</b>	employees, secondees, agents, principals and contractors (who are individuals).
<b>Purchase Price</b>	the amount payable by the Principal in respect of the Deliverables, as specified in the Supplier's quote attached as Schedule 1.
<b>Specifications</b>	the specifications set out in Schedule 1.
<b>Term</b>	the period commencing on the Commencement Date and ending on the Expiry Date, subject to extension in accordance with clause 2(c) or earlier termination.
<b>WHS</b>	work health and safety.
<b>WHS Act</b>	the <i>Work Health and Safety Act 2011</i> (NSW).
<b>Worker</b>	has the meaning given to that term in section 7 of the WHS Act.
<b>Workplace</b>	has the meaning given to that term in section 8 of the WHS Act.

### 1.3 Interpretation

- (a) In this Agreement, unless the context otherwise requires:
- (1) words importing the singular include the plural and vice versa;
  - (2) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
  - (3) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
  - (4) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute and a reference to a clause means a reference to a sub clause of that clause;
  - (5) a reference to a party to a document includes that party's successors and permitted assigns;
  - (6) a reference to A\$ and \$ means the lawful currency of Australia;

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### Supply Agreement

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2 Term

- (7) headings and bold type are for the purpose of convenient reference only and do not form part of the Agreement; and
- (8) the words "including", "such as", "for example" and "particularly" and similar expressions do not imply any limitations.

## 2 Term

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- (a) This Agreement commences on September 2016..
- (b) This Agreement expires on .....
- (c) Not used.

## 3 Supply

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### 3.1 Supply of Deliverables

- (a) The Supplier must provide Principal with the Deliverables:
  - (1) In accordance with the Specifications and the Supplier's warranties set out in clause 7;
  - (2) In accordance with applicable Laws;
  - (3) With the degree of professional skill, care and diligence expected of a competent professional supplier experienced in supplying goods or services of a similar size, scope and nature to the Deliverables;
- (b) The Supplier represents to the Principal that it has the requisite skill, experience, resources and ability to provide the Deliverables in accordance with this Agreement. The Supplier acknowledges that the Principal has entered into this Agreement in reliance on this representation.

### 3.2 Non-exclusive arrangement

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

## 4 Conflict of interest

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



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## 5 Supplier's Personnel

### 5.1 Qualifications and experience

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

### 5.2 Security

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

### 5.3 Personnel security checks

- (a) If requested to do so, the Supplier must provide to the Principal:
- (2) accurate information about the identity, qualifications, job history and character of each of the Supplier's Personnel;
  - (3) a list of any of the Supplier's Personnel with actual or proposed access to the Principal's sites or Confidential Information.
- (b) The Supplier consents, or will procure the consent of the Supplier's Personnel if required, to the Principal, at the Principal's expense:
- (1) investigating whether any of the Supplier's Personnel 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 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 5.3(b); and
  - (2) receive written notice from the Principal confirming that the person has passed the investigations described in clause 5.3(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 5.3(c) are not satisfied, unless the Principal agrees otherwise, the Supplier must, to the full extent permitted by Law:
- (2) ensure that person does not carry out any work in connection with the supply of the Deliverables; and
  - (3) provide a replacement for that person as soon as reasonably possible.
- (e) The Supplier must:
- (2) 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

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### Supply Agreement

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#### 6 Payment

- (3) obtain any necessary consent from the relevant Personnel to enable the Supplier to inform the Principal of the matters referred to in clause 5.3(e)(2).
- (f) Any investigation by the Principal under this clause 5.3 will not:
  - (2) constitute waiver of any breach of this Deed; or
  - (3) affect the Supplier's obligations and its sole responsibility for the performance of this Deed and any Separate Contract.

#### 5.4 Removal of Supplier Personnel by Principal

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

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

## 6 Payment

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### 6.1 Entitlement to Purchase Price

- (a) In consideration of the supply of the Deliverables, the Principal must pay the Supplier the Purchase Price, in accordance with this clause 6. The Purchase Price is deemed to include provision for all costs and expenses incurred by the Supplier in complying with all its obligations under this Agreement.

### 6.2 Invoices and time for payment

- (a) Within 10 Business Days after the end of each calendar month, the Supplier must submit to the Principal a valid tax invoice for all Deliverables provided to the Principal in the previous calendar month. The tax invoice must:
  - (2) specify the amount of the Purchase Price in respect of the Deliverables;
  - (3) provide details of when the Deliverables were ordered and the date of delivery or supply of such Deliverables;
  - (4) specify the amount of GST payable in respect of the supply of the Deliverables; and
  - (5) consolidate all Deliverables provided by the Supplier under the Agreement in the prior month.
- (b) The Principal must pay the Supplier the Purchase Price within 30 Business Days after receipt of a tax invoice where:

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### Supply Agreement

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#### 7 Supplier's warranties

- (2) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
  - (3) the invoice is set out as an itemised account in accordance with the requirements of clause 6.2(a); and
  - (4) the invoice is accompanied by documentary evidence that signifies that the Principal has accepted the Deliverables in accordance with this Agreement.
- (c) The Supplier must provide any further details in regard to an invoice that are reasonably requested by the Principal from the Supplier.

### 6.3 Set-off

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

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

- (a) A reference in this clause 6.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this Agreement, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- (d) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Agreement the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

## 7 Supplier's warranties

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The Supplier warrants that:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) it has all licences, authorisations, consents, approvals and permits required by applicable Laws in order to provide the Deliverables and perform its obligations under this Agreement;
- (e) the Deliverables and the supply of the Deliverables will comply with the Law in Australia and any State in which they are to be delivered; and
- (f) it has the skill, competence, capability and qualifications to supply the Deliverables.

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## 8 Supplier's insurances

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### 8.1 Minimum requirements

- (a) From the Commencement Date and for the duration of the Term (or such longer period as Principal may require) the Supplier must hold and maintain the following insurances:
- (1) broad form public liability insurance for at least \$10,000,000;
  - (2) broad form product liability insurance for at least \$10,000,000;
  - (3) broad form professional liability insurance for at least \$10,000,000;
  - (4) workers' compensation insurance and any and all other insurance as the Supplier may be required to maintain under any law applicable to the Supplier; and
  - (5) such other insurances required by the Principal.
- (b) The insurances referred to in clause 8.1(a) must:
- (1) be in terms satisfactory to the Principal;
  - (2) cover the Principal's and the Supplier's respective rights, interests and liabilities to third parties, including the liability of the Supplier to the Principal;
  - (3) be for at least the amount specified by the Principal for any one occurrence and unlimited in the aggregate annually as to the number of occurrences; and
  - (4) be valid for the term of this Agreement (or such longer period as Principal may require).

### 8.2 Evidence of insurance

Whenever so requested by the Principal in writing, the Supplier must within 10 Business Days provide, or procure provision of, evidence, to the Principal's reasonable satisfaction, that the Supplier or its subcontractors or assignees (as applicable) has obtained and maintained insurance required under clause 8.1 in accordance with this Agreement.

## 9 Indemnity

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

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## 10 Intellectual Property Rights

### 10.1 Ownership of Developed Material

- (a) The Supplier acknowledges and agrees that Principal owns the Intellectual Property Rights in all Developed Material including, without limitation, all material developed by the Supplier in the provision of the Deliverables.
- (b) On acceptance of the Deliverables by Principal in accordance with this Agreement and after the final payment has been made in accordance with clause 6:
  - (1) the Developed Material will be the sole and exclusive property of Principal; and
  - (2) the Supplier hereby assigns, as at the date of such acceptance, all of its right, title and interest in all Intellectual Property Rights (including, without limitation, as a present assignment of future copyright) in the Deliverables to Principal.
- (c) The Supplier must do all things necessary to vest title in all Intellectual Property Rights in the Deliverables to Principal without the need for further consideration.
- (d) The Supplier acknowledges that Principal may exploit, adapt, license or otherwise use the Intellectual Property Rights in the Deliverables.

### 10.2 Existing Material

- (d) The Supplier is the owner or licensee of all Intellectual Property Rights in any Existing Material and Principal acknowledges that no Intellectual Property Rights in or to that Existing Material are assigned to Principal.
- (e) On acceptance of the Deliverables by Principal in accordance with this Agreement, the Supplier grants and must ensure that any relevant third parties grant to Principal a worldwide, royalty free, non-transferable licence to use, reproduce and adapt for its own use all those Intellectual Property Rights in the Existing Material to the extent required to utilise the Developed Material in accordance with the ownership rights granted in clause 10.1

### 10.3 Breach of Intellectual Property

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

### 10.4 No promotion or advertising

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

### 10.5 Police insignia

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

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### 11 Termination

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#### 11.1 Termination by Principal for insolvency or breach

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

#### 11.2 Termination by Principal for convenience

- (a) The Supplier acknowledges and agrees that the Principal may, at any time at its absolute discretion and without providing reasons, terminate this Agreement, whether or not the Supplier is in default, by written notice to the Supplier.
- (b) If the Principal terminates this Agreement in accordance with clause 11.2(a), the Supplier's sole right and remedy will be to require payments in accordance with clause 11.4(b).

#### 11.3 Supplier's obligations on termination

If the Supplier receives a termination notice given under this clause 11, the Supplier must, (unless the notice states otherwise), immediately discontinue the supply of the Deliverables.

#### 11.4 Supplier's waiver on termination

If the Principal terminates this Agreement:

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

#### 11.5 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.

#### 11.6 Consequences of termination generally

- (d) The termination of the Supplier's engagement under this Agreement does not affect any of the Principal's other rights or remedies.

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### Supply Agreement

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- (b) If the Supplier's engagement under this Agreement is terminated under this clause 11.1, the Supplier is liable for and indemnifies the Principal against any loss suffered by the Principal as a result of the termination, including any additional costs incurred by the Principal in procuring the completion of any outstanding Deliverables.

#### 11.7 Clauses surviving termination

Clauses 7, 8.1, 9 and 10 and any other obligations which are expressed to or, by their nature, survive expiry or termination of this Agreement, survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.

## 12 General

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### 12.1 WHS

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

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### Supply Agreement

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- (h) If the Supplier breaches its obligations under this clause, the breach will give the Principal the right to terminate this Agreement, in accordance with clause 11.1.
- (i) The Supplier will not be entitled to make a claim against the Principal as a result of or in any way connected with a breach of the Supplier's obligations under this clause 12.1.
- (j) The Supplier indemnifies the Principal, against any cost, expense, loss, damage or other liability suffered or incurred by the Principal to the extent it arises from a breach by the Supplier of this clause 12.1.

### 12.2 Governing law and jurisdiction

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

### 12.3 Variation

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

### 12.4 Entire agreement

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

### 12.5 Counterparts

This Agreement may be executed in any number of counterparts.

### 12.6 Piggy backing

- (a) If any government agency (as defined in the *Government Sector Employment Act 2013* (NSW)), public body (as defined in clause 6 of the *Public Works and Procurement Regulation 2014* (NSW)) or police service from another jurisdiction within Australia or New Zealand requires the Supplier to supply any of the Deliverables, then the Supplier agrees that it will enter into a separate agreement with that entity on the terms provided in this Agreement, except for necessary changes to reflect that the Deliverables are to be supplied to that other entity.
- (b) The Supplier acknowledges and agrees that the Principal:
  - (2) will not be a party to any separate agreement entered into by the Supplier with another entity pursuant to clause 12.6(a); and
  - (3) 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.

### 12.7 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:
  - (2) 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
  - (3) brought into existence by the for the purpose of supplying the Deliverables.



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- (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 12.7(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.

### 1.1 Resources

- (a) The Principal will provide any Resources listed in the Specifications, in accordance with the terms and conditions set out in a Purchase Order.
- (b) The Supplier must:
- (1) not use the Principal's Resources other than for the purposes of supplying the Deliverables;
  - (2) not part with possession, nor create or allow the creation of any Encumbrance over any of the Principal's Resources;
  - (3) keep the Principal's Resources in good and substantial repair and condition, having regard to their condition at the beginning of the service period;
  - (4) not modify the Principal's Resources;
  - (5) promptly inform the Principal of any loss, destruction or damage to any of the Principal's Resources; and
  - (6) comply with any instruction of the Principal for the forwarding or disposal of any damaged Principal's Resources.
- (c) The Supplier must indemnify the Principal for any loss or destruction of, or damage to any of the Principal's Resources:
- (1) caused by a breach of this Deed by the Supplier or any of the Supplier's Personnel;
  - (2) caused by any unlawful or negligent act or omission of the Supplier or any of the Supplier's Personnel; or
  - (3) while in the possession of the Supplier; and
- 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 10.7(c) will be reduced proportionately to the extent that a breach of this Deed by, or the negligence of, the Principal or its Personnel contributed to the liability.

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

# Schedule 1

## Specifications

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### 1 BACKGROUND

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#### 1.1 Overview

Strikeforce Parrabell was initiated by Operational Programs in 2013. The Bias Crimes Coordinator commenced reviewing and assessing over 80 alleged 'gay hate' crimes that were reported throughout the 1980s through to 2000. The purpose of this Strikeforce was to determine if sexual orientation bias was a motivating factor in the crimes, using bias crime investigation strategies. At that stage the review process was expected to take in excess of three years to complete given the current level of resources and staffing.

An initial report was completed during this period of the Strikeforce on the Northhead Beat in October 2013, and no further work conducted until the Corporate Sponsor, Sexuality & Gender Diversity and Commander Surry Hills LAC, relocated the Strikeforce to Surry Hills LAC and allocated a team of detectives to continue the work of the review.

Strikeforce Parrabell under the direction of Commander Surry Hills LAC has been underway since 30 August 2015 and is currently staffed by a team of 10 detectives, working full time.

#### 1.2 History

'Gay' assaults and homicides have been a very visible and important part of the history of relationships between the NSWPF and the gay community. It has been well documented in research and literature, in this country and many others, that during the last few decades at least, it was not uncommon to experience or witness violence and crime perpetrated against men and women because they were perceived to be gay or lesbian. Men have been particularly vulnerable over the years and certain sites such as public reserves, beaches, toilets etc where men are known to frequent to meet other men, have been recorded as risky places where such crimes can occur.

Policing responses to these types of crime have also been documented in research, literature and media, as 'inadequate' or 'inappropriate'. This history is in fact one of the reasons why the NSWPF GLLO Program (Gay and Lesbian Liaison Officer) was established back in 1990.

tThis history does provide an important context for the work of Strikeforce Parrabell and the need to engage independent and qualified researchers to assist by providing advice and commentary on the methodology and conclusions of the Strikeforce.

#### 1.3 Current situation

Strikeforce Parabell is currently reviewing its 40<sup>th</sup> case and is expected to complete all cases by 15 August 2016. It is timely to engage suitably qualified researchers to participate in the final stages of the Strikeforce review.

At a recent meeting between the Strikeforce Parrabell team and Operational Programs staff, a process was agreed to by all to facilitate an expedient and effective conclusion to the work of the team:

1. Phase 1 completion by the Strikeforce Parrabell Team – reviewing each case utilising NSWPF Bias Crime SOPs, particularly indicators of bias crime
2. Submitting reviewed cases to the Bias Crime Unit, Operational Programs for review, particularly determinations (conclusions)
3. Invite the researcher/research team to collaborate with NSWPF to provide advice on reviewed cases, determinations (conclusions), methodology, language used and any other aspect of the Strikeforce Parrabell review (however, not on specific policing aspects of the review)

Prior to releasing any material or publishing results, adequate consultation will be conducted with families of the victims in each case and other key stakeholders (eg ACON, formerly known as AIDS Council of NSW and Alex Greenwich). Legal advice will be sought regarding publications of details.

There is significant media interest in the work of Strikeforce Parrabell and it is strongly suggested that the engagement of independent and qualified external researchers will add a completely independent perspective to outcomes and findings.

## 1.4 Challenges

One of the key challenges is locating suitable, qualified and independent researchers.

Many researchers in this area are connected to the 'gay community' and may not be as independent as desirable.

Some researchers have had their own personal history of negative relationships with police.

Other researchers are concerned about the highly political nature of this area.

Another challenge will be the sheer volume of original material that researchers may need to deal with. NSWPF will provide access to this material however, the volume is significant.

## 1.5 Time frames

1. 25 July 2016 – Send RFQ to selected parties
2. 5 August 2016 – Final date for responses to be received at Operational Programs
3. 8 August 2016 – Convene selection panel
4. September – Researcher/Research Team to start work

## 2 TERMS OF REFERENCE

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### 2.1 Services Required

- A collaborative approach to working with NSWPF on Strikeforce Parrabell
- Independent advice on Strikeforce Parrabell's (SP) review of the identified 88 deaths during the late 70s, 80s, 90s to early 2000s
- An examination of the process and method used to conduct SP including the application of NSWPF Bias Crime indicators
- Access and review original source materials as needed
- Research and provide an introductory section detailing the historical context of policing during this period and a commentary on investigating deaths of men identified as gay or transgender during this period
- Provide a conclusion including comment on the efficacy and quality of SP's review, the outcomes of the review, does the researcher agree with SP outcomes/determinations?
- Provide recommendations for future policing, community engagement, training, development of bias crime indicators/processes
- Provide relevant recommendations for future directions of the GLLO program
- Produce and publish a research article
- Throughout this entire process maintain close contact with the Corporate Sponsor Sexuality & Gender Diversity and the Senior Programs Officer (Sexuality & Gender Diversity)

# Signing page

## Executed as an Agreement

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

*sign here* ► \_\_\_\_\_

**A/General Manager, Strategic Procurement & Fleet Services**

**pursuant to the Instrument of Financial Delegation of Authority issued on 7 September 2012 by the Minister for Police, for the purpose of incurring, committing or sanctioning expenditure for the services provided to NSW Police Force as specified in this Agreement.**

**In the presence of:**

*sign here* ► \_\_\_\_\_

Witness

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

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

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

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

*sign here* ► \_\_\_\_\_  
Director

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

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