



AFP

AUSTRALIAN FEDERAL POLICE

DEED OF STANDING OFFER

BETWEEN

COMMONWEALTH OF AUSTRALIA

AS REPRESENTED BY THE AUSTRALIAN FEDERAL POLICE

AND

[INSERT NAME OF OTHER PARTY]

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THIS DEED OF STANDING OFFER is made on day of 200[X]

BETWEEN

COMMONWEALTH OF AUSTRALIA as represented by the Australian Federal Police ('Commonwealth' or 'AFP') established under the *Australian Federal Police Act 1979* (Cth) (ABN 17 864 931 143)

AND

[insert company name] ('the Service Provider') a company incorporated in **[insert state/territory]** and having its registered address at **[INSERT ADDRESS]** (ABN ###, ACN ###)

RECITALS

- A** The Commissioner of Police, as defined in the *Australian Federal Police Act 1979* (Cth) ('the Act'), may require, from time to time, capacity building services in support of the AFP's police capacity building programs.
- B** The Service Provider has offered to provide the Services as required by the AFP from time to time, and to keep this standing offer open for the agreed period, on the terms and conditions set out in this Deed of Standing Offer (hereafter "this Agreement").
- C** Aside from the AFP, other departments or agencies of the Commonwealth of Australia may elect to order Services from the Service Provider under this Agreement.
- D** The Service Provider has fully informed itself on all aspects of the work to be performed by it.
- E** The AFP has agreed to accept the Service Provider's offer to provide the Services upon the terms and conditions set out in this Agreement.
- F** The Service Provider acknowledges that:
 - (a) the AFP may not require the Service Provider to provide any Services at all under this Agreement; and
 - (b) the AFP has given no representation or undertaking that any minimum amount of work that will be provided under this Agreement.
- G** The Commissioner of the AFP has engaged the Service Provider to perform services under section 35(1) of the Act.
- H** In signing this Deed the Commissioner has determined under section 35(2) of the AFP Act the Service Provider and its Specified Personnel to be AFP Appointee's for the purposes of the AFP Act.

THE PARTIES AGREE:

Part 1 – PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement unless the contrary intention appears:

AFP Appointee	means the Service Provider or any Specified Personnel determined by the Commissioner under s35(2) of AFP Act to be an AFP Appointee;
AFP Material	means any Material: (a) provided by the AFP to the Service Provider for the purposes of this Agreement; or (b) derived from Material so provided;
Agreement	means this Deed of Standing Offer, including the Schedules and any Attachments, and any document expressly incorporated as part of this Deed of Standing Offer;
Commissioner	means the Commissioner of Police, as defined in the <i>Australian Federal Police Act 1979</i> , and includes any person or persons to whom the Commissioner of Police delegates in writing the powers of the Commissioner;
Confidential Information	means information that is by its nature confidential (including AFP Material); and (a) a Party knows or ought to know is confidential; or (b) is designated by a Party as confidential and is described in Item F of Schedule 2 ; but does not include: (c) information which is, or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligation;
Confidentiality Undertaking	means a Confidentiality Undertaking entered by a Specified Personnel in the form of Schedule 4 ;
Contract	means the contract that is formed when the AFP places an Official Order with the Service Provider pursuant to clause 2A ;

Contract Manager	means the AFP representative specified by position in Item A of Schedule 2 or the person for the time being performing the duties of that position, being the person with the responsibility under this Agreement for (amongst other things) general liaison with the Service Provider, supervising performance of the Service Provider and approving payment of fees;
Deed of Personal Obligation	means a Deed of Personal Obligation executed by an AFP Appointee in the form of Schedule 3 ;
Intellectual Property	includes all copyright, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
Material	means information or data stored by any means, and includes Intellectual Property, documents and software;
New Material	means all Material: (a) created for the purpose of this Agreement; (b) provided or required to be provided to the AFP as part of the Services; or (c) derived at any time from the Material referred to in paragraphs (a) or (b);
Official Information	means any information developed, received or collected by or on behalf of the AFP;
Official Order	means the document, substantially in the form of Schedule 5 , that the AFP forwards to the Service Provider in accordance with clause 2A whenever the AFP wishes to purchase the Services;
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 a material form or not, about a natural person whose identity is apparent, or can be reasonably ascertained, from the information or opinion;
Security Classified Information	means Official Information that, if compromised, could have adverse consequences for the AFP;
Services	means the services as generally described in Item A of Schedule 1 and more particularly described in an Official Order;

Specified Personnel	means the personnel specified at Item C of Schedule 1 , or at Item E of an Official Order, as personnel required to perform the Services or part of the work constituting the Services;
Subcontractor	means a person engaged by the Service Provider, other than an employee of the Service Provider, to provide any part of the Services; and
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the AFP or the Service Provider in connection with this Agreement, including, without limitation, any right of possession, receivership control or power of sale, and any mortgage, charge, security or other interest.

1.2 Interpretation

1.2.1 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a reference to the 'AFP' or the 'Australian Federal Police' includes any entity that may, from time to time, administer this Agreement on behalf of the AFP;
- (d) all monetary references are to Australian dollars;
- (e) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and Attachments if any), the terms and conditions of the clauses prevail; and
- (f) where any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails.

1.3 Entire Agreement and Severance

1.3.1 This Agreement records the entire agreement between the parties in relation to the subject matter.

1.3.2 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

1.4 Variation

1.4.1 No variation of this Agreement is binding unless it is agreed in writing between the parties.

Part 2 - SERVICES

2. SERVICE REQUIREMENTS AND WARRANTIES

- 2.1 This Agreement will commence and expire on those dates specified in **Item E of Schedule 1**.
- 2.2 The Service Provider agrees to:
- (a) perform the Services as described in **Item A of Schedule 1** in accordance with the highest standard of best practice, including any Commonwealth and industry standards and guidelines specified in **Item B of Schedule 1**;
 - (b) comply with any time frame for the performance of the Services specified in **Item A of Schedule 1**; and
 - (c) liaise with the Contract Manager, provide any information the Contract Manager may reasonably require and comply with any reasonable request made by the Contract Manager.
- 2.3 The Service Provider warrants that:
- (a) it has the necessary expertise, experience, capacity and facilities required to perform its obligations and responsibilities in accordance with this Agreement; and
 - (b) it has fully informed itself on all aspects of the work required to be performed by it.

2A PROVISION OF THE SERVICES

- 2A.1 The Service Provider agrees to provide the Services detailed in an Official Order, as required by the AFP from time to time.
- 2A.2 Unless otherwise agreed to in writing between the parties, all Official Orders must:
- (a) be approved and signed by the Contract Manager; and
 - (b) display the words "Official Order".
- 2A.3 It is an express condition of this Agreement that the AFP is not obliged to place an Official Order with the Service Provider.
- 2A.4 It is an express condition of this Agreement that the AFP may at any time purchase or acquire services, the same or similar to the Services as specified in this Agreement, in any other way, and from any other person on such terms and conditions as may be agreed between the AFP and that other person.
- 2A.5. When the AFP requires provision of the Services, the AFP will specify the precise Services in the Official Order and will complete and send the Official Order to the

Service Provider in a manner to be agreed between the parties at the address as detailed at **Item 1 of Schedule 1**. The Service Provider will promptly acknowledge all Official Orders placed.

- 2A.6 The Service Provider agrees that each Official Order sent to the Service Provider by the AFP in accordance with this Agreement will create a separate Contract between the AFP and the Service Provider.
- 2A.7 A Contract will take effect upon receipt of the Official Order by the Service Provider, as determined by **clause 29.3**.
- 2A.8 The parties agree that the terms of each Contract created by the placement of an Official Order will be:
- (a) those set out in this Agreement (in which case, a reference to 'Agreement' will be read as a reference to 'Contract'); and
 - (b) any additional terms specified in the Official Order.
- 2A.9 No legal or equitable obligation arises between the parties regarding the purchase of the Services unless and until the AFP, in accordance with this Agreement, issues an Official Order.
- 2A.10 The Service Provider will not accept any Official Order that is not correctly completed but will inform the AFP promptly of any Official Order which it has not accepted and the action required to correct the deficiency.
- 2A.11 In the event of any inconsistency between the terms specified in the Official Order and the terms appearing in this Agreement, the terms of the Official Order will prevail to the extent of any inconsistency.
- 2A.12 The Service Provider must fulfil all Contracts entered into prior to the expiry of this Agreement, notwithstanding that Contract completion may occur after the expiry of this Agreement.
- 2A.13 Other agencies or departments of the Commonwealth of Australia may elect to order and be provided with Services from the Service Provider under this Agreement. All such ordering and provision of Services remains subject to this Agreement.

3. RESPONSIBILITY OF THE SERVICE PROVIDER

- 3.1 The Service Provider agrees to be fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Agreement.
- 3.2 The Service Provider agrees that it will not be relieved of its responsibility under **clause 3.1** because of any:
- (a) involvement by the AFP in the performance of the Services;
 - (b) payment made to the Service Provider on account of the Services;

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- (c) subcontracting of the Services; or
 - (d) acceptance by the AFP of replacement personnel.
- 3.3 The Service Provider acknowledges that the AFP has determined the Service Provider to be an AFP Appointee, while the AFP reserves the right to determine any Subcontractor as an AFP Appointee.
- 3.4 The Service Provider acknowledges its responsibility to inform those Specified Personnel and any Subcontractors that are determined as AFP Appointees that they may be required to sign a Deed of Personnel Obligation.
- 3.5 The Service Provider agrees to assist the AFP in the management of any AFP Appointees and related personnel issues that may arise from time to time.

Part 3- MANAGEMENT ISSUES

4. SPECIFIED PERSONNEL

- 4.1 The Service Provider will ensure that the Services are performed by suitably qualified and experienced personnel (including any necessary certification or accreditation).
- 4.2 The Service Provider agrees that the Specified Personnel will perform work in relation to the Services in accordance with this Agreement.
- 4.3 The Service Provider acknowledges that the AFP has determined its Specified Personnel to be AFP Appointees for the purposes of the AFP Act.
- 4.4 Where Specified Personnel are unable to perform the work, the Service Provider will notify the AFP immediately.
- 4.5 The AFP may, at its absolute discretion, give notice requiring the Service Provider to immediately remove personnel (including Specified Personnel) from work in relation to the Services. The AFP is not required to provide reasons for the notice under this **clause 4.4**.
- 4.6 Where **clauses 4.3 or 4.4** apply, the AFP may request the Service Provider to provide replacement personnel of appropriate skills and experience acceptable to the AFP at no additional cost and at the earliest opportunity.
- 4.7 Any requirement to replace any of the Specified Personnel during the course of the Agreement, whether at the request of the AFP or not, will not constitute an act or event that is beyond the reasonable control of the Service Provider in meeting the requirements of this Agreement.
- 4.8 If the Service Provider does not comply with any request under **clause 4.5**, the AFP may terminate this Agreement in accordance with the provisions of **clause 21** (*Termination for Default*).

5. SUBCONTRACTORS

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- 5.1 The Service Provider must not subcontract all of the Services and may only subcontract part of the Services if it first obtains the AFP's written approval. The giving of any approval under this clause will not relieve the Service Provider from any liability under this Agreement.
- 5.2 The Service Provider acknowledges that the AFP may, from time to time, determine that a subcontractor is an AFP Appointee for the purposes of the AFP Act.
- 5.3 The Service Provider must not alter the proportion or type of Services performed by a particular Subcontractor without first obtaining the AFP's written approval.
- 5.4 The Service Provider will ensure that each Subcontractor complies with:
- (a) the terms of this Agreement;
 - (b) all relevant laws of the Commonwealth, State, Territory or local authority; and
 - (c) any rules, policies, guidelines, processes and procedures of the AFP (including security and occupational health and safety procedures) that are relevant to the Subcontractor's performance of the Services.

6. REPORTING AND MEETINGS

- 6.1 The Service Provider agrees to liaise with and report to the Contract Manager as reasonably required by the Contract Manager during the period of the Agreement.
- 6.2 The AFP Contract Manager and a representative of the Service Provider must hold regular progress meetings at times and locations specified in writing by the AFP to review or discuss the following matters:
- (a) the provision of the Services;
 - (b) the performance of subcontractors;
 - (c) the contents and accuracy of invoices and reports;
 - (d) complaints or problems and their resolution;
 - (e) manage and resolve any issues arising from the Service Provider's or Specified Personnel's status as an AFP Appointee; and
 - (f) other matters as required.
- 6.3 Without waiting for the next progress meeting, the Service Provider must report immediately to the AFP Contract Manager on any actual, perceived or anticipated problems or concerns (including matters relating to security or occupational health and safety) that may have a significant effect on the delivery, operation or cost of the Services.
- 6.4 Each party must promptly attend to all matters arising from the progress meetings held under **clause 6.2** that require its attention.

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- 6.5 Each party must be represented at the progress meetings by people who are suitably qualified and informed in relation to the Services under this Agreement and are able to provide sufficient information on any relevant matter to enable the parties to properly assess and direct progress under this Agreement.
- 6.6 The Service Provider must bear its own costs in respect of all meetings required under this Agreement and of attending to the matters arising that require its action or attention.

Part 4 – PRICING AND ASSISTANCE

7. FEES AND ASSISTANCE

- 7.1 The AFP agrees to:
- (a) pay the fees specified in an Official Order, which at all times must be based upon those list of Fees in **Item B of Schedule 2** unless the Fees listed in any Official Order are more favourable to the AFP;
 - (b) pay the allowances and meet the costs specified in **Item C of Schedule 2**; and
 - (c) provide AFP facilities and assistance specified in **Item E of Schedule 2**.
- 7.2 The AFP is entitled, in addition to any other right it may have, to delay payment or any instalment of fees or allowances until the Service Provider has completed to the satisfaction of the AFP that part of the Services to which that payment relates.
- 7.3 The Service Provider agrees to submit invoices for payment in the manner specified in **Item F of Schedule 1**.

8. GOODS AND SERVICES TAX

- 8.1 The fees determined in accordance with **clause 7 (Fees and Assistance)** includes Goods and Services Tax (GST) for taxable supplies as defined in *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) made under this Agreement.
- 8.2 The Service Provider agrees to issue the AFP with a tax invoice in accordance with the GST Act in relation to taxable supplies made under this Agreement.
- 8.3 If this Agreement requires the AFP to:
- (a) reimburse the Service Provider for a supply made to the Service Provider under this Agreement by a third party; and
 - (b) the Service Provider is entitled to claim an input tax credit on any amount paid by it for that supply

then, in addition to the amount the AFP must pay for the supply, the AFP must pay the amount of any GST imposed on that supply less the value of any input tax credit to which the Service Provider is entitled.

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- 8.4 Where a variation in a government tax, duty or charge reduces the cost of the Services, the fees and charges under this Agreement will be reduced to take account of those savings.

Part 5 – INTELLECTUAL PROPERTY

9. AFP MATERIAL

- 9.1 The AFP agrees to provide AFP Material to the Service Provider, including the AFP Material as specified in **Item D of Schedule 2**.
- 9.2 The parties agree that ownership of all AFP Material remains vested at all times in the AFP.
- 9.3 The AFP gives to the Service Provider a royalty-free, non-exclusive licence to use, reproduce and adapt the AFP Material, excluding any Confidential Information, for the purposes of this Agreement.
- 9.4 The Service Provider agrees to ensure that all AFP Material is used strictly in accordance with any conditions or restrictions set out in **Item D of Schedule 2** and any direction by the AFP.
- 9.5 On the expiration or earlier termination of this Agreement, the Service Provider agrees to immediately return to the AFP all AFP Material remaining in its care, custody or control.

10. NEW MATERIAL

- 10.1 The parties agree that Intellectual Property in New Material vests in the Commonwealth on creation.
- 10.2 If requested by the Commonwealth, the Service Provider agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to **clause 10.1**.
- 10.3 **Clause 10.1** does not affect the ownership of Intellectual Property in any of the Service Provider's pre-existing Material that is specified in **Item D of Schedule 1**.
- 10.4 The Service Provider gives to the Commonwealth a permanent, irrevocable, royalty-free, world-wide and non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit, any such pre-existing Material in conjunction with other New Material.
- 10.5 The Service Provider warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in any New Material in the manner provided for in this **clause 10**.

Part 6 - INFORMATION MANAGEMENT AND ACCESS

11. DEALINGS WITH DOCUMENTS

- 11.1 This **clause 11** applies to any document, device, article or medium ('Documents') in which AFP Material, New Material or Confidential Information that vests in the AFP is embodied.
- 11.2 Property in all Documents vests in the AFP.
- 11.3 The Service Provider agrees to:
- (a) establish and maintain procedures to secure Documents against loss and unauthorised access, use, modification or disclosure; and
 - (b) acknowledges and agrees to comply with the requirements of the *Archives Act 1983*.
- 11.4 On the expiration or termination of this Agreement the Service Provider agrees to deliver to the AFP all Documents, or otherwise deal with the Documents as directed by the AFP.

12. CONFIDENTIALITY

12.1 Confidential Information not to be disclosed

- 12.1.1 Subject to **clause 12.3.1**, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.
- 12.1.2 In giving written consent to the disclosure of Confidential Information, a Party may impose such conditions as it thinks fit and the other Party agrees to comply with these conditions.

12.2 Written Undertakings

- 12.2.1 A Party may at any time require the other Party to arrange for:

- (a) its advisers; or
- (b) any other third party or person with a Third Party Interest, other than a Commonwealth employee, to whom information may be disclosed pursuant to **clause 12.3.1(a) or (e)**,

to give a written undertaking in the form of a deed relating to the use and non-disclosure of the first Party's Confidential Information.

- 12.2.2 If the other Party receives a request under **clause 12.2.1**, it must promptly arrange for all such undertakings to be given.

12.3 Exceptions to obligations

- 12.3.1 The obligations on the Parties under this **clause 12** will not be taken to have been breached to the extent that Confidential Information is:

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- (a) disclosed by a Party to its advisers or employees solely in order to comply with obligations, or to exercise rights under this Agreement;
 - (b) disclosed to a Party's internal management personnel, solely to enable effective management of auditing of contract related activities;
 - (c) disclosed by the Commonwealth to the responsible Minister;
 - (d) disclosed by the Commonwealth in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (e) shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - (f) authorised or required by law, including under this Agreement under a licence or otherwise, to be disclosed; or
 - (g) in the public domain otherwise than due to a breach of this **clause 12**.

12.4 Obligation on disclosure

12.4.1 Where a party discloses Confidential Information to another person:

- (a) pursuant to **clauses 12.3.1(a), (b) or (e)**, the disclosing Party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to **clauses 12.3.1(c) and (d)** the disclosing party must notify the receiving party that the information is Confidential Information.

12.5 Additional confidential information

12.5.1 The Parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.

12.5.2 Where the Parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement, on the date by which both parties have signed this documentation.

12.6 Period of confidentiality

12.6.1 The obligations under this clause continue, notwithstanding the expiry or termination of this Agreement:

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- (a) in relation to an item of information described in **Item F of Schedule 2**, for the period set out in that schedule in respect of that item; and
 - (c) in relation to any information which the Parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the Parties in writing in respect of that information.

12.7 Confidentiality Undertaking

12.7.1 The AFP may at any time require the Service Provider to arrange for its officers, employees, agents and subcontractors engaged in the performance of the Services to execute a Confidentiality Undertaking in a form as provided in **Schedule 4** and provide that Confidentiality Undertaking to the Contract Manager before that person commences the performance of the Services.

12.7.2 The AFP may at any time require the Service Provider to arrange for those Specified Personnel determined to be AFP Appointees to execute a confidentiality undertaking as part of a Deed of Personal Obligation in a form as provided in **Schedule 3**.

12.7.3 If the Service Provider receives a request under this **clause 12.7** it agrees to arrange promptly for all such undertakings to be given.

12.8 No reduction in privacy obligations

12.8.1 Nothing in this **clause 12** derogates from any obligation which either Party may have under the *Privacy Act 1988* as amended from time to time, or under this Agreement, in relation to the protection of Personal Information.

12.9 Third Party Interests

12.9.1 The Service Provider will, at all times, disclose any Third Party Interests to the AFP and warrants that at the time of entering into this Agreement, no undisclosed Third Party Interest exists.

12.9.2 If the Service Provider fails to comply with **clause 12.9.1**, the AFP is entitled to terminate this Agreement in accordance with **clause 21**.

12.9.3 The Service Provider undertakes that it will not at any time create, or arrange with any third party, any Third Party Interest without first obtaining the AFP's written approval. In giving its approval, the AFP may impose any conditions it sees fit.

13. PROTECTION OF PERSONAL INFORMATION

13.1 The Service Provider agrees to:

- (a) use Personal Information held or controlled by it in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (b) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against loss

and unauthorised access, use, modification or disclosure;

- (c) comply with the Information Privacy Principles contained in the *Privacy Act 1988* to the extent that those principles apply to the types of activities the Service Provider is undertaking under this Agreement, as if it were an agency as defined in the *Privacy Act 1988*;
- (d) co-operate with any reasonable demands or inquiries made by the Contract Manager on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* including, but not limited to, a request from the Contract Manager to comply with a guideline concerning the handling of personal information;
- (e) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in this **clause 13**;
- (f) comply in so far as is practicable with any policy guidelines laid down by the AFP or issued by the Privacy Commissioner from time to time relating to the handling of personal information; and
- (g) comply with any direction of the Contract Manager to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Service Provider that the Privacy Commissioner considers breach the obligation in this **clause 13**.

14. ACCESS AND AUDITS

14.1 Audits may be conducted by the AFP, or a nominee of the AFP, in relation to:

- (a) the Service Provider's operational practices and procedures, including the efficiency of the Service Provider's operations;
- (b) the accuracy of the Service Provider's invoices and reports in relation to the provision of the Services under this Agreement;
- (c) the Service Provider's compliance with its security, occupational health and safety, confidentiality and privacy obligations under this Agreement or under any law; and
- (d) any other matters determined by the AFP to be relevant to the performance of the Services.

14.2 The Service Provider agrees, at all reasonable times, to give to the AFP or to any AFP nominee:

- (a) immediate access to premises occupied by the Service Provider where the Services are being undertaken; and
- (b) permission to inspect the performance of the Services and any AFP Material, New Material or other Material relevant to the Services.

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- 14.3 The Australian Auditor-General or a delegate of the Auditor-General, for the purpose of performing the Auditor-General's statutory functions, may, at reasonable times:
- (a) access the premises of the Service Provider;
 - (b) require the provision by the Service Provider, its employees, agents or subcontractors, of records and information which are related to this Agreement; and
 - (c) inspect and copy documentation and records, however stored, in the custody or under the control of the Service Provider, its employees, agents or subcontractors which are related to this Agreement.
- 14.4 The Service Provider must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause giving the rights specified in this **clause 14**.
- 14.5 This **clause 14** applies for the Term of this Agreement and for a period of 5 years from the date of its expiration or termination.
- 14.6 Each party is to bear its own costs associated with audits under this **clause 14**.
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Part 7 – RISK MANAGEMENT

15. COMPLIANCE WITH LAW AND POLICIES

- 15.1 The Service Provider, in carrying out this Agreement, acknowledges and agrees to comply with all relevant legislation of the Commonwealth or of any State, Territory or local authority, including:
- (a) the *Crimes Act 1914* and *Criminal Code Act 1995* (particularly regarding offences that relate to unauthorised access to or modification or impairment of computer data and dishonestly using information to obtain a benefit from anyone or cause detriment to anyone);
 - (b) section 60A of the AFP Act (regarding the non-disclosure of prescribed information);
 - (c) the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and *Disability Discrimination Act 1992*; and
 - (d) any obligations it has under the *Equal Opportunity for Women in the Workplace Act 1999*.
- 15.2 The Service Provider agrees that when using the AFP's premises or facilities for the purposes of providing the Services, it will comply with all laws, policies, procedures (as notified by the AFP or as might reasonably be inferred) and reasonable directions relating to security and occupational health and safety in effect at those premises or in regard to those facilities.

16. SECURITY

16.1 *General security obligations*

16.1.1 If, during the term of this Agreement, the Service Provider is required to access or otherwise gains access to Official Information or Security Classified Information, it agrees to comply with:

- (a) all relevant security requirements specified in the Commonwealth Protective Security Manual as notified by the AFP from time to time;
- (b) the security requirements specified in **Item G of Schedule 1**; and
- (c) any variations or additions to the security requirements under **clauses 16.1.1(a) and 16.1.1(b)** that the AFP (in its absolute discretion) notifies the Service Provider in writing, from the date specified in the notice (or 5 business days after it receives the notice if no date is specified).

16.1.2 If the Service Provider can substantiate that changes to the security requirements pursuant to **clause 16.1.1(c)** have cost implications for it, the Service Provider may apply to the AFP for reimbursement of additional costs necessarily incurred by the Service Provider in complying with the changes to these security requirements.

16.2 *Security reports*

16.2.1 The Service Provider agrees to notify the AFP immediately if it becomes aware that a security incident has occurred which is likely to affect the performance of the Services.

17. OCCUPATIONAL HEALTH AND SAFETY

17.1 In addition to the obligations it has under **clause 15.2**, the Service Provider agrees to ensure the Services are carried out in a manner which does not pose any avoidable health or physical safety risk to AFP employees, the Service Provider's employees, or any other person.

17.2 The Service Provider agrees to be subject to any monitoring, inspection, investigation or audit of occupational health and safety matters in relation to the Services, including at the Service Provider's premises and in relation to the Service Provider's equipment. This may include the monitoring, inspection, investigation or audit of environmental conditions in respect of light, noise, temperature, or the presence of hazardous substances.

18. INDEMNITY

18.1 The Service Provider agrees to indemnify the AFP from and against any:

- (a) liability incurred by the AFP;
- (b) loss of or damage to property of the AFP; or

-
- (c) loss or expense incurred by the AFP in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of the time spent, resources used or disbursements paid by the AFP,

arising from:

- (d) any action or omission by the Service Provider, its officers, employees, agents or subcontractors in connection with this Agreement;
- (e) any breach by the Service Provider of its obligations or warranties under this Agreement;
- (f) any use or disclosure by the Service Provider, its officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
- (g) the use by the AFP of New Material,

where there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

18.2 The Service Provider's liability to indemnify the AFP under **clause 18.1** will be reduced proportionally to the extent that any negligent act or omission of the AFP contributed to the relevant liability, loss or damage, or loss or expense.

18.3 The right of the AFP to be indemnified under this **clause 18** is in addition to, and not exclusive of, any other right, power or remedy provided by law.

18.4 It is not necessary for the AFP to have incurred an expense or to have made a payment before enforcing a right of indemnity under this **clause 18**.

18.5 In this **clause 18**, "AFP" includes officers, employees and agents of the AFP.

18.6 This **clause 18** will survive the expiration or termination of this Agreement.

19. INSURANCE

19.1 The Service Provider agrees for so long as any obligations remain in connection with this Agreement to effect and maintain insurance, as specified in **Item H of Schedule 1**, for all the Service Provider's obligations under this Agreement (including those that survive the expiration or termination of this Agreement), in the Service Provider's name and noting the AFP's interests.

19.2 Prior to work commencing under this Agreement, the Service Provider agrees to provide proof of insurance in a form acceptable to the AFP.

Part 8 - TERMINATION

20. TERMINATION AND REDUCTION FOR CONVENIENCE

-
- 20.1 The AFP may, at any time by written notice, terminate this Agreement or reduce the scope of the Services immediately.
- 20.2 On receipt of a notice of termination the Service Provider agrees to:
- (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination and to protect AFP Material and New Material; and
 - (c) continue work on any part of the Services not affected by the notice.
- 20.3 If this Agreement is terminated under **clause 20.1**, the AFP will be liable only for:
- (a) payments and assistance under **clause 7 (Fees and Assistance)** for services rendered before the effective date of termination; and
 - (b) reasonable costs incurred by the Service Provider and directly attributable to the termination.
- 20.4 Where there has been a reduction in the scope of the Services, the AFP's liability to pay fees or allowances, meet costs or provide facilities and assistance under **clause 7 (Fees and Assistance)** will, unless there is an agreement in writing to the contrary, abate proportionately with the reduction in the Services.
- 20.5 The AFP will not be liable to pay compensation under **clause 20.3(b)** in an amount which would exceed the fees set out in **Item B** of any current or ongoing Official Orders issued under this Agreement.
- 20.6 The Service Provider will not be entitled to compensation for loss of prospective profits.

21. TERMINATION FOR DEFAULT

- 21.1 Where a party does not satisfy any of its obligations under this Agreement, the other party if it considers that the failure is:
- (a) not capable of remedy, may, by notice, terminate this Agreement immediately; or
 - (b) capable of remedy, may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.
- 21.2 The AFP may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration; or

-
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors; or
 - (c) fails to comply with any security requirements as set out in **clause 16**.

22. TRANSITION OUT

- 22.1 On the termination or expiration of this Agreement and if requested by the AFP, the Service Provider must provide all reasonable assistance and cooperation necessary to transfer the Services to the AFP or an alternative contractor in a manner which ensures continued provision of the Services.

Part 9 - GENERAL OBLIGATIONS

23. CONFLICT OF INTEREST

- 23.1 The Service Provider warrants that, to the best of its knowledge after making diligent inquiries, at the date of signing this Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement by itself or by any of its officers, employees, agents or subcontractors.
- 23.2 If, throughout the duration of this Agreement, a conflict of interest arises, or appears likely to arise, the Service Provider agrees to notify the AFP immediately in writing and to take such steps as the AFP may reasonably require to resolve or otherwise deal with the conflict.
- 23.3 If the Service Provider does not notify the AFP as required under **clause 23.2**, or is unable or unwilling to resolve or deal with the conflict as required, the AFP may terminate this Agreement in accordance with the provisions of **clause 21** (*Termination for Default*).
- 23.4 The Service Provider agrees not to (and agrees to ensure that any officer, employee, agent or subcontractor of the Service Provider does not) engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Service Provider in providing the Services to the AFP fairly and independently.

24. RELATIONSHIP OF PARTIES AND PUBLICITY

- 24.1 Whether because of this Agreement or otherwise, the Service Provider agrees:
- (a) not to represent itself; and
 - (b) to ensure that its officers, employees, agents and subcontractors do not represent themselves,
- as being an officer, employee, partner or agent of the AFP, or as otherwise able to bind or represent the AFP.
- 24.2 Except to the extent authorised by this Agreement, the Service Provider will not by

virtue of this Agreement be, or for any purpose be deemed to be, an employee or agent of the AFP. No partnership will be deemed to arise between the parties as a consequence of this Agreement.

- 24.3 The Service Provider must not use the AFP name or logo, suggest any endorsement of the AFP, or make any public announcement or media release about any aspect of this Agreement, without the prior written consent of the AFP.
- 24.4 In addition to the Service Provider's obligation under **clause 12** (Confidential Information) and section 60A of the AFP Act relating to non-disclosure of prescribed information, the Service Provider must not, without the prior written consent of the AFP, Publish or cause to be Published any AFP Material, New Material or Confidential Information.
- 24.5 In this **clause 24**, "Publish" means to communicate or convey such material to one or more persons by any means (including, but not limited to, publication on the internet).

25. WAIVER

- 25.1 A waiver by either party in respect of any breach of a condition or provision of this Agreement will not be considered to be a waiver in respect of any:
- (a) continuing or subsequent breach of that provision; or
 - (b) breach of any other provision.
- 25.2 The failure of either party to enforce at any time any of the provisions of this Agreement does not operate as a waiver of those rights.

26. DISPUTE RESOLUTION

- 26.1 The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
- (a) first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
 - (b) second, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
 - (c) third, the parties have 10 business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
 - (d) last, if:
 - (i) there is no resolution or agreement; or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15

business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days,

then, either party may commence legal proceedings.

26.2 Despite the existence of a dispute, the Service Provider will (unless requested in writing not to do so) continue to perform the Services.

26.3 This **clause 26** does not apply to:

- (a) action by either party under or purportedly under **clause 21** (*Termination for Default*), or
- (b) action by the AFP under or purportedly under **clause 7.2** (*Fees and Assistance*), or **clause 20** (*Termination and Reduction for Convenience*).

27. ASSIGNMENT AND NOVATION

27.1 The Service Provider agrees not to assign or novate, in whole or in part, its:

- (a) rights; and
- (b) obligations,

under this Agreement without the prior written approval of the AFP.

27.2 The Service Provider agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the AFP.

28. APPLICABLE LAW

28.1 The laws of the Australian Capital Territory apply to this Agreement.

29. NOTICES

29.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with as follows:

- (a) if given by the Service Provider to the AFP - marked for the attention of the Contract Manager at the address indicated in **Item 1 of Schedule 1** or as otherwise notified by the AFP; or
- (b) if given by the AFP to the Service Provider - signed by the Contract Manager and marked with the address indicated in **Item 1 of Schedule 1** or as otherwise notified by the Service Provider.

29.2 Any such notice, request or other communication is to be delivered by hand or sent by pre-paid post, or transmitted electronically.

29.3 Any notice, request or other communication will be taken to be received if:

- (a) delivered by hand, on the date of delivery;
- (b) sent by prepaid post within Australia, on the expiration of 2 business days after the date on which it was sent; or
- (c) transmitted electronically, at the time the machine on which it has been sent records that it has been transmitted satisfactorily.

29.4 The AFP reserves the right to specify any minimum level of authentication, non-repudiation and security requirements in regards to notices transmitted electronically.

EXECUTED as a Deed

SIGNED, SEALED AND DELIVERED)
for and on behalf of the)
)
COMMONWEALTH OF AUSTRALIA)
as represented by the Australian Federal Police)
)
by.....))
 (Print Name)) (Signature) (Date)
)
in the presence of:)
)
.....))
 (Print Name of Witness)) (Signature of Witness)

SIGNED, SEALED AND DELIVERED)
for and on behalf of)
)
[INSERT COMPANY NAME])
ABN **XX XXX XXX XXX**)
)
by authority of the Director)
)
.....))
 (Print Name of Director)) (Signature of Director) (Date)
)
by the authority of the Director/Company Secretary)
or in the presence of the Witness)
)
.....))
 (Print Name of Director/Company Secretary or Witness)) (Signature of Director/Company Secretary
) or Witness)

Please note that, in accordance with section 127 of the *Corporations Act 2001*, if this Agreement is executed in the name of a company, it must be signed by:

- Two (2) Directors of the company; or
- A Director and a Company Secretary.

If the company has only one Director who is also the sole Company Secretary, then that person can sign the Agreement with a witness. If this Agreement is executed in the name of a Sole Trader, then that person can sign the Agreement with a witness.

SCHEDULE 1- SERVICE PROVIDER'S OBLIGATIONS AND WORK TO BE PERFORMED

A SERVICES *(as referred to in clause 1 and clause 2)*

The Services consist of the following: **[TO BE COMPLETED POST TENDER]**

[It is important to ensure that all aspects of the Services are COMPREHENSIVELY described, including:

- *significant milestones such as applicable timeframes for service delivery*
- *expected performance criteria and indicators*
- *mandatory qualifications]*

B STANDARDS AND BEST PRACTICE *(as referred to in clause 2.2)*

The Services are to be performed in accordance with the relevant best practice.

In addition, the Services are to be performed in accordance with the following Commonwealth and industry standards and guidelines: **[TO BE COMPLETED POST TENDER]**

[Insert detail or delete if not applicable]

C SPECIFIED PERSONNEL *(as referred to in clause 1 and clause 4)*

The Specified Personnel nominated to undertake and perform the Services are:

[TO BE COMPLETED POST TENDER]
[Insert Names and AFP Appointee Status]

D PRE-EXISTING INTELLECTUAL PROPERTY *(as referred to in clause 9)*

Ownership of any intellectual property in the following pre-existing Material remains vested in the Service Provider: **[TO BE COMPLETED POST TENDER]**

[Insert Detail or the words "Not Applicable"]

E TERM OF AGREEMENT *(as referred to in clause 2.1)*

The period of engagement of the Service Provider will be from **[insert day/month]** 2010 up to and including **[insert day/month]** 2013. **[TO BE COMPLETED POST TENDER]**

The AFP may, at its absolute discretion, extend the term of this Agreement for up to two (2) additional periods of one (1) year each.

F INVOICE PROCEDURES *(as referred to in clause 7)*

Invoices forwarded by the Service Provider must be correctly addressed and will include the following information:

- (a) Service Provider's name or trading name and ABN;
- (b) title of the Service;
- (c) name of the Contract Manager;
- (d) purchase order number (if any);
- (e) the invoice period and date of issue;
- (f) an attached copy of the hours worked by each of the Service Provider's Specified Personnel or other approved personnel, for the invoice period;
- (g) the price of the taxable supply; and
- (h) the amount of GST expected to be payable.

Fees and expenses are to be invoiced on a monthly basis.

The due date for payment of an invoice raised by the Service Provider is 30 days after delivery of a correctly rendered invoice.

G SECURITY AND INTEGRITY *(as referred to in clause 16)*

The Service Provider (including the Specified Personnel) are required to undergo and maintain the following security vetting requirements:

[Insert Detail or the words "Not Applicable" - NOTE: Consultation with Personnel Security should occur in determining the extent of any security requirements]

All costs associated with the processing of the clearances are to be borne by the AFP.

H INSURANCE *(as referred to in clause 19)*

The Service Provider agrees to maintain:

- (a) workers compensation insurance for the amount required by any state or territory legislation applicable to it;
- (b) public liability insurance for an amount (per event) not less than \$10,000,000; and
- (c) professional negligence insurance for an amount (per event) not less than \$5,000,000.

I ADDRESS FOR NOTICES *(as referred to in clause 29)*

The Service Provider's Address for Notices:

Location: **[TO BE COMPLETED POST TENDER]**

[Insert location address details]

Postal Address:

[insert postal address details]

The AFP's Address for Notices:

Location:

Australian Federal Police
AFP Headquarters
68 Northbourne Avenue
Canberra, ACT

Postal Address:

Australian Federal Police
GPO Box 401
Canberra ACT 2601

SCHEDULE 2 – AFP'S OBLIGATIONS

A **CONTRACT MANAGER** *(as referred to in clause 1)*

The AFP Contract Manager will be the person holding, occupying or performing the duties of the position of:

[Insert Detail]

B **FEES** *(as referred to in clause 7)*

Provided the work undertaken is of a standard acceptable to the AFP, the AFP agrees to pay the Service Provider: **[TO BE COMPLETED POST TENDER]**

[insert details of the fee structure, e.g. \$ [INSERT AMOUNT] per hour up to a maximum of [INSERT AMOUNT] hours.]

The total fee will be a maximum of \$ **[INSERT AMOUNT]**.

The due date for payment is 30 days after delivery of a correctly rendered invoice to the AFP.

C **ALLOWANCES AND COSTS** *(as referred to in clause 7)*

[Insert Detail or add the following words IF applicable:]

It is not anticipated that the Service Provider will incur any expenses outside the scope of Fees (**Item B of Schedule 2**, above) in performing the Services. With the prior written approval of the AFP, the AFP agrees to reimburse the Service Provider in relation to disbursements for airfares (economy only), taxis, accommodation and meal allowances, with all such disbursements to be at standard AFP rates (non-SES level rates), incurred by the Service Provider in providing the Services.

D **AFP MATERIAL** *(as referred to in clause 1 and clause 9)*

The AFP agrees to provide the Service Provider the following AFP Material for the purposes of this Agreement: **[TO BE COMPLETED POST TENDER]**

[Insert Detail or the words "Not Applicable"]

E **FACILITIES AND ASSISTANCE** *(as referred to in clause 7)*

The AFP agrees to provide the following facilities and assistance:

[Insert Detail. For example, "AFP accommodation and normal office services and facilities for XXX Specified Personnel which the Service Provider satisfies the AFP Contract Manager are reasonable for the performance of the Services" or insert the

words "Not Applicable"]

F CONFIDENTIAL PROVISIONS (as referred to in clause 12)

1. The parties agree the following information is designated by the AFP as Confidential Information:

(a) Specific information including Agreement Provisions/Schedules/Attachments

Item <i>Specify provision</i>	Reasons for confidentiality	Period of Confidentiality
E.g. – Descriptions of the Services and all Schedules	National security, national interest, AFP operations or methodology, reputation of the AFP, the AFP's ability to perform its function, or personal information	Indefinite

(b) Information obtained or generated through performance of contract

Item	Reasons for confidentiality	Period of Confidentiality
E.g. - All information or documents relating to AFP operations or functions, or containing security, sensitive or personal material	National security, national interest, AFP operations or methodology, reputation of the AFP, the AFP's ability to perform its functions, or personal information	Indefinite

2. The parties agree the following information is designated by the Service Provider as Confidential Information:

(a) Specific information including Agreement Provisions/Schedules/Attachments

Item <i>Specify provision</i>	Reasons for confidentiality	Period of Confidentiality
Not Applicable		

(b) Information obtained or generated through performance of contract

Item	Reasons for confidentiality	Period of Confidentiality
Not Applicable		

SCHEDULE 3 DEED OF PERSONAL OBLIGATION

THIS DEED OF AGREEMENT is made on day of 2010

BETWEEN

COMMONWEALTH OF AUSTRALIA as represented by the Australian Federal Police ('Commonwealth' or 'AFP') established under the *Australian Federal Police Act 1979* (Cth) (ABN 17 864 931 143)

AND

(INSERT NAME AND ADDRESS) ('you')

YOUR STATUS AS AN AFP APPOINTEE

You are a Specified Personnel under an agreement between the AFP and **[Company Name]** ('the Service Provider') on **[Date]** to provide Capacity Building Services.

The Commissioner's delegate has determined under section 35(ii) of the *Australian Federal Police Act 1979* ('AFP Act') that the Service Provider is an AFP Appointee for the purposes of the AFP Act.

You acknowledge that you are not an employee of the AFP but are providing services to the AFP pursuant to s35(i) of the AFP Act, as an independent contractor employed by the Service Provider. The terms and conditions for the provision of the services you provide are set out in the agreement between the AFP and the Service Provider

In signing this document the Commissioner's delegate has determined that you are an AFP Appointee under section 35(ii) for the purposes of the AFP Act. As an AFP appointee, you are subject to the following

- **AFP Code of Conduct**
- **AFP complaints reporting, investigation, management and resolution process**
- **AFP professional standards and security**

The attached document titled '*A Reference Guide to Professional Standards in the AFP*' (**Attachment B**) provides more information on your obligations as an AFP appointee. You are required to read this reference guide and sign an acknowledgement that you have read and understood the reference guide.

You acknowledge that these obligations are ongoing and will continue to apply to you, even if you no longer provide services to the AFP.

YOUR HANDLING OF CONFIDENTIAL INFORMATION

In the course of providing services to the AFP, you may become aware of information (including personal information) that may be:

- confidential;
- subject to the *Privacy Act 1988* (Cth); or
- subject to Commonwealth secrecy laws.

This information is referred to as 'AFP information' for the purposes of this Deed.

The AFP Act has a specific secrecy provision which protects any information which you obtain in the

course of providing services to the AFP. You are also considered to be a Commonwealth Officer as defined by the *Crimes Act 1914* (Cth) and/or a Commonwealth Public Official as defined in the *Criminal Code 1995* (Cth).

You understand that improper access, use or disclosure of AFP information may severely damage the reputation of the AFP or the AFP's ability to perform its statutory functions and may constitute a criminal offence.

You acknowledge that unless expressly authorised by the AFP, you must not use, disclose, communicate or record AFP information except in the course of:

- **providing services to the AFP; or**
- **undertaking AFP duties, functions or powers.**

If the AFP grants such authorisation, conditions may be imposed and, in any event, you agree you will only disclose in these circumstances to those persons that have a demonstrated need to know.

You agree to abide by all security classification guidelines which may exist in respect of such information and undertake to accord the appropriate degree of protection to:

- all information which you are notified of; and
- information intended to be the subject of national or international security restrictions or regulations.

You agree you have received a copy of the document titled "*Handling AFP Information – Some Applicable Legislative Provisions*" (**Attachment A**) that sets out some of the applicable provisions relating to the access, use and disclosure of AFP information. You acknowledge that these provisions may apply irrespective of whether a document is marked with a security classification.

CONSENT TO DISCLOSE AND EXCHANGE INFORMATION

I, **Acknowledge** and **Agree** to the following:

Whilst providing services or assistance to the AFP pursuant to an agreement between the AFP and a service provider to whom I am an employee, officer, contractor, subcontractor or agent ('my Service Provider'), the AFP may disclose or exchange information with, or to, my Service Provider and other third parties in connection with, or related to, the performance or provision of my services or assistance to the AFP.

You understand that these obligations and rights are ongoing and their applicability does not depend on whether you continue to provide services to or work with the AFP.

In signing this document you agree to and acknowledge the following:

1. I am independent contractor engaged as an employee of the Service Provider to provide services to the AFP under s35(1) of the AFP Act;
2. I am an AFP Appointee under s35(ii) for the purposes of the AFP Act; and,
3. I acknowledge my obligations in respect of non disclosure of AFP information and the AFP Code of Conduct and professional standards.

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED)

on behalf of the **COMMONWEALTH OF AUSTRALIA**)
as represented by the Australian Federal Police)

by.....)
(Print Name of AFP section 35(i) and (ii) delegate))

.....)
(Signature) (Date)

in the presence of:)

.....)
(Print Name of Witness))

.....)
(Signature of Witness)

SIGNED SEALED AND DELIVERED)

by.....)
(Print Name of Specified Person))

.....)
(Signature) (Date)

in the presence of:)

.....)
(Print Name of Witness))

.....)
(Signature of Witness)

SCHEDULE 4

CONFIDENTIALITY UNDERTAKING

I, _____ of _____
Name Address

Acknowledge and Agree to the following:

In the course of my employment with, or whilst providing services or assistance to, the Australian Federal Police ('AFP'), I may become aware of information (including personal information) that may be:

- confidential;
- subject to the *Privacy Act 1988* (Cth); or
- subject to Commonwealth secrecy laws.

This information is referred to as 'AFP information' for the purposes of this Undertaking.

The *Australian Federal Police Act 1979* (Cth) secrecy provision protects any information obtained in the course of providing services to the AFP or undertaking AFP duties, functions or powers.

I understand that improper access, use or disclosure of AFP information may severely damage the reputation of the AFP or the AFP's ability to perform its statutory functions and may constitute a criminal offence.

Unless I have been expressly authorised by the AFP, I must not use, disclose, communicate or record AFP information except in the course of:

- **providing services to the AFP; or**
- **undertaking AFP duties, functions or powers.**

If the AFP grants such authorisation, conditions may be imposed and, in any event, I will only disclose in these circumstances to those persons that have a demonstrated need to know.

I agree to abide by all security classification guidelines which may exist in respect of such information and I undertake to accord the appropriate degree of protection to:

- all information which I am notified of; and
- information intended to be the subject of national or international security restrictions or regulations.

I am considered to be a Commonwealth Officer as defined by the *Crimes Act 1914* (Cth) and/or a Commonwealth Public Official as defined in the *Criminal Code 1995* (Cth).

I have received a copy of the document titled "*Handling AFP Information – Some Applicable Legislative Provisions*" (**Attachment A**), that sets out some of the applicable provisions relating to the access, use and disclosure of AFP information. I understand that these provisions may apply irrespective of whether a document is marked with a security classification.

I understand that these obligations are ongoing and their applicability does not depend on

whether I continue to provide services to or work with the AFP.

Signature:

.....

Date: / /

Witnessed By:

.....

Date: / /

.....

Print Name

SCHEDULE 5
FORM OF OFFICIAL ORDER

OFFICIAL ORDER

This Official Order is submitted by the AFP to the Service Provider pursuant to clause 2A of a Deed of Standing Offer for the provision of Capacity Building Services that the AFP and the Service Provider entered into on [day] [month] 2010 ('the Deed').

[TO BE COMPLETED POST AGREEMENT SIGNATURE WHEN SERVICES BEING ORDERED]

A SERVICES *(as referred to in clause 1 and clause 2)*

The Service Provider is required to provide the Services as follows, and in the following manner:

Details of Specific Services Required by the AFP

[###]

Milestones and Delivery Dates

[###]

Site where Services will be Performed

[###]

B FEES *(as referred to in clause 7)*

Provided the work undertaken is of a standard acceptable to the AFP, the AFP agrees to pay the Service Provider:

[Insert Fee Amounts Including Breakdown of Payment Against Relevant Milestones]

The total fee will be a maximum of \$[Insert amount] (GST inclusive).

The due date for payment is 30 days after delivery of a correctly rendered invoice to the AFP with any such invoice to be provided to the AFP only upon successful completion of the Services corresponding to the relevant milestones and delivery dates identified in **Item A** of this Official Order and this **Item B**.

C CONTRACT MANAGER *(as referred to in clause 1)*

Contract Manager

The AFP Contract Manager is the person holding, occupying or performing the duties of the position of:

- [###]

D ADDRESS FOR NOTICES *(as referred to in clause 29)*

For the purposes of this Official Order, the following address for notices will apply:

Service Provider's Address for Notices:

Location:

[Insert location address details]

Postal Address:

[Insert postal address details]

AFP's Address for Notices:

Location:

[Insert location address details]

Postal Address:

[Insert postal address details]

E SPECIFIED PERSONNEL *(as referred to in clause 1 and clause 4)*

The Specified Personnel nominated to undertake and perform the Services are:

- [###]

F SECURITY AND INTEGRITY *(as referred to in clause 16)*

Security Vetting

The Specified Personnel are required to undergo and maintain the following security vetting requirements:

- **AFP CLEARANCE LEVEL - SECRET.**

G AFP MATERIAL *(as referred to in clause 1 and clause 9)*

The AFP agrees to provide the Supplier the following AFP Material for the purposes of this Agreement:

- [Insert detail, or the words 'Not Applicable']

H FACILITIES AND ASSISTANCE *(as referred to in clause 7)*

The AFP agrees to provide the following facilities and assistance:

- [Insert detail, or the words 'Not Applicable']

I CONFIDENTIAL PROVISIONS *(as referred to in clause 12)*

1. The parties agree the following information is designated by the AFP as Confidential Information:

(a) Specific information including Agreement Provisions/Schedules/Attachments

Item <i>Specify provision</i>	Reasons for confidentiality	Period of Confidentiality
###	###	

(b) Information obtained or generated through performance of contract

Item	Reasons for confidentiality	Period of Confidentiality
###	###	

2. The parties agree the following information is designated by the Service Provider as Confidential Information:

(a) Specific information including Agreement Provisions/Schedules/Attachments

Item <i>Specify provision</i>	Reasons for confidentiality	Period of Confidentiality

Eg, not applicable	###	
--------------------	-----	--

(b) Information obtained or generated through performance of contract

Item	Reasons for confidentiality	Period of Confidentiality
Eg, not applicable	###	

EXECUTED as a contract by the parties on the date first recorded below.

SIGNED on behalf of the)
)
COMMONWEALTH OF AUSTRALIA)
as represented by the Australian)
Federal Police)
)
by.....))
 (Print Name)) (Signature) (Date)
)
in the presence of:)
)
.....))
 (Print Name of Witness)) (Signature of Witness)

SIGNED for and on behalf of)
)
[INSERT COMPANY NAME])
ABN **XX XXX XXX**)
)
by)
)
.....))
 (Print Name of Authorised Person)) (Signature of Authorised Person) (Date)
)
in the presence of)
)
.....))
 (Print Name of Witness)) (Signature of Witness)

ATTACHMENT A

HANDLING AFP INFORMATION – SOME APPLICABLE LEGISLATIVE PROVISIONS

GENERAL

There are many Commonwealth laws that apply to Commonwealth employees, contractors and other people working for the Government. Some of these provisions are summarised below, however this list is not intended to be exhaustive. They represent examples of some provisions that might apply in respect of information about what you may encounter while working in the AFP.

In most instances, these laws will continue to apply even after you have ceased working with the AFP.

Full details of any these statutes are available via the ComLaw resource at <http://www.comlaw.gov.au>.

If you have any questions regarding this document please contact AFP Personnel Security.

SECRECY

The general secrecy provision relevant to the AFP is as follows:

Australian Federal Police Act 1979 (Cth)

Section 60A - Secrecy

1) *This section applies to a person who is, or was at any time:*

- a) the Commissioner; or*
- b) a Deputy Commissioner; or*
- c) an AFP employee; or*
- d) a special member; or*
- e) a person engaged under section 35; or*
- f) a person performing functions under an agreement under section 69D.*

2) *A person to whom this section applies must not, directly or indirectly:*

- a) make a record of any prescribed information; or*
- b) divulge or communicate any prescribed information to any other person;*

except for the purposes of this Act or the regulations or the Witness Protection Act 1994 or regulations under that Act, or for the carrying out, performance or exercise of any of the person's duties, functions or powers under this Act or the regulations or the Witness Protection Act 1994 or regulations under that Act.

Penalty: Imprisonment for 2 years

3) *In this section, 'prescribed information' means information obtained by a person to whom this section applies in the course of carrying out, performing or exercising any of the person's duties, functions or powers under this Act or the regulations or the Witness Protection Act 1994 or regulations under that Act, or otherwise in the course of the person's service, employment or engagement under this Act or the regulations or the Witness Protection Act 1994 or regulations under that Act.*

There are other secrecy provisions which may apply. These include, for example, Section 70 of the *Crimes Act 1914* (Cth) which prohibits a Commonwealth Officer communicating information obtained by virtue of being a Commonwealth Officer which it is their duty not to disclose.

Additionally there are many other secrecy provisions that might apply to certain types of other information that persons working with the AFP may encounter. They include, for example, information relevant to the investigation of complaints against AFP personnel, telecommunications information, financial information, and some information obtained from other countries, to name a few.

COMPUTER OFFENCES

The *Criminal Code Act 1995* includes many offences relating to unauthorised access to or modification or impairment of computer data.

PRIVACY ACT

The AFP is an 'agency' within the terms of the *Privacy Act 1988* (Cth). Accordingly it is subject to obligations concerning the collection, storage, use and disclosure of personal information in its records. In particular, the eleven information privacy principles at section 14 of the Privacy Act set out the duties of an agency in that regard.

OTHER

There are a wide range of other offences that may arise from improper handling of AFP information. Dishonestly using information to obtain a benefit from anyone, or cause detriment to anyone is a serious offence under the *Criminal Code Act 1995* (Cth).

ATTACHMENT B

A REFERENCE GUIDE TO PROFESSIONAL STANDARDS IN THE AFP

A Reference Guide to Professional Standards in the Australian Federal Police (AFP) as it applies to Contractors/Consultants and Specified Personnel.

The purpose of this brochure is to provide you with information about the obligations of Contractors/Consultants and Specified Personnel deemed to be an AFP appointee.

As an AFP appointee, you are required to adhere to the AFP Values. These are:

Integrity:	A quality that underpins an individual's soundness of moral principles. It is manifested in their uprightness, honesty and sincerity in their approach to themselves, others and their work.
Commitment:	Characterised by dedication, application, perseverance, a belief in a personal capacity and professionalism to achieve and add value.
Excellence:	Seeking improvement in everything we do and in the quality of the services we provide.
Accountability:	Ownership of work results, personal actions and being answerable for outcomes.
Fairness:	Characteristics of impartiality and equity.
Trust:	Faith, confidence and being able to rely and depend on others.

You are also required to adhere to the AFP Code of Conduct. The Code of Conduct details conduct expected of AFP appointees. Under the Code of Conduct, AFP appointees must:

- act with due care and diligence in the course of providing services to or on behalf of the AFP.
- act with honesty and propriety in the course of AFP providing services to or on behalf of the AFP.
- act with fairness, reasonableness, courtesy and respect, and without discrimination or harassment, in the course of AFP providing services to or on behalf of the AFP.
- at all times, comply with all applicable Australian laws. For this purpose, Australian law means:
 - a) any ACT, or any instrument made under an Act; or
 - b) any law of a State or Territory, including any instrument made under such a law.
- comply with any lawful direction given by a person who has the authority to give such direction.

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- disclose, and at all times take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their contractual arrangements with the AFP.
 - not make improper use of:
 - a) information obtained directly or indirectly as a result of providing services to or on behalf the AFP; or
 - b) duties, status, power or authority as an AFP appointee,

in order to gain, or seek to gain, a benefit or advantage for the appointee or for any other person, or for any other improper purpose.

- use and manage Commonwealth resources in a proper manner.
- at all times behave in a way that upholds the good order and discipline of the AFP.
- at all times behave in a way that upholds the AFP core values, and the integrity and good reputation of the AFP.
- while working overseas on behalf of the AFP, at all times behave in a way that upholds the good reputation of Australia.

If you breach the Code of Conduct, the matter is reportable and will be dealt with according to the seriousness of the breach. This may involve conciliation; some form of training and development; counselling, reprimand or formal warning; removal as a specified personnel; and criminal charges.

The AFP has a comprehensive integrity framework that ensures the highest level of accountability of its employees, Contractors/Consultants, Specified Personnel and of the organisation to maintain the confidence of government and the community. A number of governance instruments exist to guide AFP appointees in their work and behaviour.

Commissioner's Order 2 articulates the professional standards of the AFP and outlines the AFP complaint management methodology and processes. It contains the AFP Values and Code of Conduct.

Commissioner's Order 4 relates to finance. The *Financial Management and Accountability Act 1997* (FMA Act) and related FMA legislation requires the Commissioner to manage the resources of the AFP in an efficient, effective and ethical manner.

AFP appointees undertaking commercial activities on behalf of the AFP are required to adhere to Commissioner's Financial Instructions (CFIs) within Commissioner's Order 4, as well as the **National Guideline on Procurement, Contracting and Commercialisation, including Sponsorships, IP and Use of AFP Logos**, the Commonwealth Procurement Guidelines, and any other directions promulgated by the AFP's Commercial Governance Committee (CGC).

Commissioner's Order 4 covers a variety of issues relating to financial matters in the AFP. Of particular importance are the following:

- Approving proposals to spend public money;

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- Procurement of goods and services and engagement of consultants;
 - Use of corporate credit cards, Diners' Club cards and other credit cards;
 - Official travel;
 - Offering and accepting hospitality and entertainment; and
 - The general care and custody of AFP property.

A number of **National Guidelines** and **Practical Guides** also cover these issues. These are located on the **AFP Hub** (Intraweb) under **Governance Instruments – Finance**. If you do not have access to the AFP Hub you can request these documents from your relevant contract manager.

A serious breach of Commissioner's Orders, National Guidelines or AFP Regulations is formally investigated and if it is established, may result in termination of an AFP appointee's engagement with the AFP.

National Guidelines are relevant to a variety of issues relating to the operations of the AFP. As new circumstances arise for the organisation, National Guidelines are created to guide employees/AFP appointees. It is your responsibility as an AFP appointee to become familiar with these documents as they relate to you. Some of the National Guidelines relevant to you as a Contractor/Consultant/Specified Personnel are provided in **Appendix A**. This is not an exhaustive list and should be used as a guide only.

In addition to these guidelines, there are two Practical Guides that are very relevant to Contractors/Consultants/Specified Personnel in relation to professional standards.

The first of these is the **AFP Practical Guideline on Contact Incident Reporting**, which guides AFP appointees in reporting contact incidents such as having contact with foreign nationals, media representatives and criminals. There is an extensive list of circumstances that must be reported to the AFP to protect AFP appointees and the AFP. It is essential for all AFP appointees to understand their obligations in relation to reporting. The **AFP National Guideline on Professional Reporting** and the **AFP National Guideline on Reporting Obligations** provide further guidance on reporting obligations and the mechanisms for reporting.

Other reporting forms include the **Change of Circumstances** form, which facilitates the reporting of changes in an AFP appointee's circumstances, such as changes to marital status, a significant change to financial status and overseas travel; **Complaint Against AFP Member/s** form, which facilitates the reporting of a complaint against another AFP appointee; and **Security – Loss of Commonwealth Property – Security Incident** form for reporting the loss or damage of AFP property, and security incidents such as threat of damage/attack to AFP facilities/activities/personnel/assets.

These forms are available on **AFP Forms**, which can be accessed from the toolbar in Microsoft Word. If you do not have access to AFP computer systems, you can request these documents from your relevant business area.

The second Practical Guide which is relevant to Contractors/Consultants/Specified Personnel is the **AFP Practical Guideline on Secondary Employment**. It provides guidance to AFP appointees regarding applications for secondary employment. The AFP must assess the suitability of secondary employment to ensure there is no conflict of interest. Any secondary employment must be applied for using the application form, which is

available as a hyperlink from the Practical Guide. The AFP can require contractors and consultants to declare no conflict of interest with services that they are providing to other clients.

By reporting circumstances and incidents which may have security and professional standards implications, the AFP and AFP appointees are protected from harm and loss of reputation. The AFP has designed an integrity framework that proactively supports professional standards in the organisation through policy and practices, training and proactive investigation. All AFP appointees are provided with the information and support to meet the professional standards requirements of the AFP, but the ultimate responsibility for understanding these requirements and upholding the standards rests with each individual.

Professional Standards are everyone's responsibility.

APPENDIX A

AFP National Guideline on Procurement, Contracting and Commercialisation, including Sponsorships, IP and Use of AFP Logos	Provides practical advice on issues relating to procurement, commercialisation and contracting to ensure compliance with CFIs.
AFP National Guideline on the Use of Prohibited Drugs	Addresses the use of prohibited drugs and applies to all AFP personnel. Illicit drug use is prohibited by the AFP and all AFP appointees come under the AFP drug testing regime.
AFP National Guideline on Official Travel	Provides direction on official travel to ensure the comfort and safety of those travelling and also to develop an appropriate financial accountability structure through a requirement to adhere to the directions set out in CO 4 and this National Guideline and to maintain accurate travel records.
AFP National Guideline on Use of AFP Vehicles	Describes how the AFP will lease, purchase, manage and operate its national and overseas vehicle fleet. Drivers have certain obligations in relation to AFP vehicles, which are stipulated in this guideline.
AFP National Guideline on Home-Based Work	Contains the framework for the operation of home-based working arrangements in the AFP. The AFP makes provision for these working arrangements with consideration of a variety of security requirements.
AFP National Guideline on Breaches of Security	Details the reporting and investigation of breaches of security. The investigation of breaches of security is extremely important for the AFP as it may provide useful security intelligence and provide evidence that existing security procedures should be modified or entirely new procedures developed.
AFP National Guideline on Loss or Compromise of Classified Material	Details the immediate action to be taken when classified material cannot be accounted for, is stolen or is believed to be compromised. This meets the Commonwealth Protective Security Manual requirements.