

AGREEMENT MADE ON 16<sup>th</sup> DAY OF May 2003

## **SERVICES AGREEMENT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**  
AS REPRESENTED BY THE AUSTRALIAN FEDERAL POLICE

**AND**

**GLOBAL EDGE GROUP PTY LTD**  
TRADING AS NATIONAL OPEN SOURCE INTELLIGENCE CENTRE

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THIS AGREEMENT is made on

16<sup>th</sup> day of May 2003

BETWEEN

**COMMONWEALTH OF AUSTRALIA** as represented by the Australian Federal Police ('Commonwealth' or 'AFP') established under the *Australian Federal Police Act 1979 (Cth)* (ABN 17864931143)

AND

**GLOBAL EDGE GROUP PTY LTD**, trading as National Open Source Intelligence Centre ('the Service Provider') a company incorporated in State of Victoria and having its registered address at:

Deckker Partners  
Suite B  
2 Domville Avenue  
Hawthorne  
Victoria 3122  
(ABN 44782273615).

#### RECITALS

- A** The Commissioner of Police, as defined in the *Australian Federal Police Act 1979 (Cth)* ('the Act'), requires services in relation to the provision of open source intelligence material.
- B** The Service Provider has offered to provide those services and the AFP has agreed to accept the Service Provider's offer to provide the Services on the terms and conditions set out in this Agreement.
- C** The Commissioner of the AFP has engaged the Service Provider to perform services under section 35 of the Act.

THE PARTIES AGREE:

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### Part 1 – PRELIMINARIES

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement unless the contrary intention appears:

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**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 document including the Schedules and any Attachments, and any document expressly incorporated as part of this Agreement;

**Commissioner**

means the Commissioner of Police, as defined in the *Australian Federal Police Act 1979*, 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:

- (a) is by its nature confidential;
- (b) is designated by the issuing party as confidential; or
- (c) the receiving party knows or ought to know is confidential;

but does not include information that (with the exception of Personal Information):

- (d) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;
- (e) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the issuing party; or
- (f) has been independently developed or acquired by the receiving party;

**Confidential Provision**

means a provision appearing in this Agreement:

- (a) regarded by the parties as Confidential Information; and
- (b) specified in **Item F Schedule 2**;

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<b>Contract Manager</b>	means the AFP representative specified by name or position in <b>Item A of Schedule 2</b> 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;
<b>Intellectual Property</b>	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;
<b>Material</b>	means information and data stored by any means, and includes Intellectual Property, documents and software;
<b>New Material</b>	means all Material: <ul style="list-style-type: none"> <li>(a) created for the purpose of this Agreement;</li> <li>(b) provided or required to be provided to the AFP as part of the Services; or</li> <li>(c) derived at any time from the Material referred to in paragraphs (a) or (b);</li> </ul>
<b>Personal Information</b>	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;
<b>Services</b>	means the services described in <b>Item A of Schedule 1</b> ;
<b>Specified Personnel</b>	means the personnel specified at <b>Item C of Schedule 1</b> as personnel required to perform the Services or part of the work constituting the Services;
<b>Subcontractor</b>	means a person engaged by the Service Provider, other than an employee of the Service Provider, to provide any part of the Services.

## 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;

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- (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) words importing persons include a partnership and a body whether corporate or otherwise;
  - (e) all monetary references are to Australian dollars;
  - (f) reference to any statute or other legislation (whether primary or subordinate) is a reference to a statute or other legislation of the Commonwealth, as amended or replaced from time to time;
  - (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
  - (h) 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;
  - (i) where any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails; and
  - (j) reference to a Schedule (or an Attachment) is a reference to a Schedule (or Attachment) to this Agreement, including as amended or replaced from time to time by agreement in writing between the parties.

### **1.3 Entire Agreement**

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

### **1.4 Reading Down and Severance**

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

### **1.5 Variation**

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

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## **Part 2 - SERVICES**

### **2. SERVICE REQUIREMENTS AND WARRANTIES**

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- 2.1 This Agreement will commence on the date of execution by both parties and will continue in force for the period 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:
- (d) it has the necessary expertise, experience, capacity and facilities required to perform its obligations and responsibilities in accordance with this Agreement; and
  - (e) it has fully informed itself on all aspects of the work required to be performed by it.

### **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;
  - (c) subcontracting of the Services; or
  - (d) acceptance by the AFP of replacement personnel.

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## **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

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to the Services in accordance with this Agreement.

- 4.3 Where Specified Personnel are unable to perform the work, the Service Provider will notify the AFP immediately.
- 4.4 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 **clause 4.4**.
- 4.5 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.
- 4.6 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.
- 4.7 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**

- 5.1 The Service Provider must not subcontract all of the Services and may only subcontract part of the Services only 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 must not alter the proportion or type of Services performed by a particular Subcontractor without first obtaining the AFP's written approval.
- 5.3 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:



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- (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; and
  - (e) 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.
- 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.

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## **Part 4 – PRICING AND ASSISTANCE**

### **7. FEES AND ASSISTANCE**

- 7.1 The AFP agrees to:
- (a) pay the fees specified in **Item B of Schedule 2**;
  - (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**

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- 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.
- 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.

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## **Part 5 – INTELLECTUAL PROPERTY**

### **9. AFP MATERIAL**

- 9.1 The AFP agrees to provide AFP Material to the Service Provider 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 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 possession.

### **10. NEW MATERIAL**

- 10.1 The parties agree that Intellectual Property in New Material vests, or will vest, in the Service Provider on creation.
- 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,

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reproduce, and adapt any New Material and pre-existing Intellectual Property.

- 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**.

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## **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, or will vest, 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. DISCLOSURE OF INFORMATION**

- 12.1 The Service Provider agrees not to disclose to any person, other than the AFP, any Confidential Information relating to this Agreement or Services without prior written approval from the AFP.
- 12.2 In giving written approval under **clause 12.1**, the AFP may impose such terms and conditions as it considers appropriate.
- 12.3 The AFP may at any time require the Service Provider to:
- (a) give an undertaking in writing in a form required by the AFP relating to the non-disclosure of Confidential Information; and
  - (b) arrange for its officers, employees, agents and subcontractors engaged in the performance of the Services to give an undertaking in writing in a form required by the AFP relating to the non-disclosure of Confidential Information.
- 12.4 If the Service Provider receives a request under **clause 12.3** it agrees to arrange promptly for all such undertakings to be given.
- 12.5 The obligation on the Service Provider under this **clause 12** will not be taken to have

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been breached where the information referred to is legally required to be disclosed, and the Service Provider has first provided the AFP notice in writing (including any relevant details) of such an intended disclosure.

- 12.6 The AFP will not, without the prior written consent of the Service Provider, disclose any of the Service Provider's Confidential Information to persons not legally entitled to such information.
- 12.7 The parties agree that any Confidential Provision must:
- (a) be specified in **Item F Schedule 2**; and
  - (b) include the reason for confidentiality.
- 12.8 This **clause 12** will survive the expiration or termination of this Agreement.

### **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 Act;
- (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

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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.
- 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 All costs associated with audits under this **Clause 14** will be shared equally between the Parties.

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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:
- (a) all relevant legislation of the Commonwealth or of any State, Territory or local authority, including the *Crimes Act 1914*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, and *Disability Discrimination Act 1992*; and
  - (b) 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 AND INTEGRITY

- 16.1 In addition to the obligations it has under **clause 15.2** of this Agreement, the Service Provider acknowledges the obligations it has under the *Crimes Act 1914* (particularly Parts VI, VIA and VII) and section 60A (secrecy) of the *Australian Federal Police Act 1979*.
- 16.2 The Service Provider agrees to comply with any security requirements (including personnel security vetting) as specified in **Item G of Schedule 1**.

### 17. OCCUPATIONAL HEALTH AND SAFETY

- 17.1 In addition to the obligations it has under **clause 15.2** of this Agreement, 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 contractor'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;

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- (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.

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## 19. INSURANCE

- 19.1 The Service Provider agrees for so long as any obligations remain in connection with this Agreement:
- (a) 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; and
  - (b) to provide, when requested by the AFP, proof of insurance in a form acceptable to the AFP.

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## Part 8 - TERMINATION

### 20. TERMINATION AND REDUCTION FOR CONVENIENCE

- 20.1 The AFP may, at any time by 45 days written notice, terminate this Agreement or reduce the scope of the Services.
- 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, in addition to any amounts paid or due (or becoming due) to the Service Provider under this Agreement, together exceed the fees set out in **Item B Schedule 2**.
- 20.6 The Service Provider will not be entitled to compensation for loss of prospective profits.



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## 21. TERMINATION FOR DEFAULT

- 21.1 Where a party does not satisfy any of its obligations under this Agreement, the other party 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 Law, 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.

## 22. TRANSITION OUT

- 22.1 On the termination or expiration of this Agreement, 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.

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## 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.

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## **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.

## **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:

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- (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, 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 I 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 I of Schedule 1** or as otherwise notified by the Service Provider.

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- 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:
- (a) if delivered by hand, on the date of delivery;
  - (b) if sent by prepaid post within Australia, on the expiration of 2 business days after the date on which it was sent; or
  - (a) if 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. The parties agree to share costs in equal portions in complying with this **clause 29.4**.