



Memorandum of Understanding

between

New Zealand Police

and

Serious Fraud Office

This Memorandum of Understanding is made:

Between The Commissioner of the New Zealand Police

And The Director of the Serious Fraud Office

Introduction

1. The New Zealand Police (Police) functions that are provided in section 9 of the Policing Act 2008 are to:
 - keep the peace
 - maintain public safety
 - enforce the law
 - prevent crime
 - support and reassure the community
 - maintain national security
 - participate in policing activities outside New Zealand, and
 - manage emergencies.
2. For the purpose of this Memorandum of Understanding (MoU) all agencies hosted within Police (such as the Organised & Financial Crime Agency New Zealand) are considered to be bound by the terms of this MoU.
3. The Serious Fraud Office (SFO) was established for the purpose of detecting, investigating and expeditiously prosecuting serious or complex fraud. The SFO aims to give New Zealanders greater financial security and greater confidence in the integrity of the public sector by fighting all forms of serious financial crime.
4. The SFO and Police, referred to hereafter as the parties, currently work together and offer advice to each other. This MoU formalises this relationship and specifies the terms and conditions under which this will occur.

Interpretation

5. In this MoU:

Areas of common interest mean those matters where each party contributes to a shared outcome or has a shared statutory, investigative or intelligence role or interest.

Operational Group means the following people from the SFO and the Police:

- General Manager Fraud Detection and Intelligence (SFO)

- either the General Manager, Fraud and Corruption, or the General Manager, Financial Markets and Corporate Fraud (SFO), and
- either the National Manager Financial Crime Group, or the National Manager Criminal Investigations, or the Operations Manager OFCANZ (Police).

Primary Contacts means the following people from the SFO and the Police:

- the SFO General Manager, to whom the relevant investigation has been assigned, or for general matters, the General Manager, Fraud Detection and Intelligence, and
- the Police Assistant Commissioner Investigations and International and/or his nominee.

Strategic Group means the following persons from the SFO and the Police:

- the Director of the SFO and the General Manager Fraud Detection and Intelligence, and
- the Commissioner of Police and the Assistant Commissioner Investigations and International.

Purpose

6. The purpose of this MoU is to promote a principled partnership approach and further enhance the cooperation and coordination between the parties on areas of common interest or joint responsibility.

Outcome

7. The agreed outcome of this MoU is to facilitate the most effective and efficient use of the parties' resources, information and intelligence to:
 - reduce all forms of fraud and economic crime
 - disrupt organised crime
 - enforce New Zealand's anti-bribery and corruption law, and
 - ensure New Zealand is a safe place to invest.
8. In regards to financial crime, the SFO is primarily responsible for:
 - receiving reports of bribery and corruption
 - investigating cases of bribery and corruption, and
 - the detection, investigation and prosecution of serious or complex fraud.

9. In determining whether serious or complex fraud has occurred, the following is used as a general guide:
- the nature of the suspected fraud, including any factual, financial, or legal complexity
 - the impact of the alleged offending on public confidence in New Zealand as a safe place to invest, or on the integrity of New Zealand's financial markets
 - the number of investors and/or victims involved and the impact of the alleged offending on them
 - public interest considerations and the likely preventative impact of a successful prosecution, and
 - the suspected scale of the alleged offending.
10. In the context of this MoU, Police has primary responsibility for:
- investigating allegations of fraud below the SFO threshold
 - investigating organised criminal activity
 - recovering assets under the Criminal Proceeds (Recovery) Act 2009, and
 - administering the intelligence functions under the Financial Transactions Reporting Act 1996.

Liaison

11. The parties agree that:
- they will maintain a regular forum for liaison on areas of common interest (the "liaison forum")
 - the liaison forum will consist of the Operational Group and the Strategic Group
 - the Operational and Strategic Group will meet as required, but at least once every six months
 - meetings of the Operational Group may be convened within five days notice at the request of either party, and
 - meetings of the Strategic Group may be convened within one month's notice at the request of either party.
12. The role of the Operational Group is to:
- review the outcomes of joint investigations and prosecutions
 - identify issues or make recommendations based on joint investigations and prosecutions to the Strategic Group
 - assess the effectiveness of processes established under this MoU and recommend changes to the Strategic Group, and
 - authorise changes to the contact details specified in the Appendix to this MoU.

13. The role of the Strategic Group is to:

- consider reports provided by the Operational Group
- review the relationship between the parties and the implementation of this MoU, and
- consider any changes to this MoU to ensure successful collaboration between the parties.

Review of the Memorandum of Understanding

14. The parties will review this MoU every three years.

Schedules to the Memorandum of Understanding

15. The parties agree that from time to time they may develop protocols relating to specific matters involving the parties and that these will be attached to this MoU as schedules.

16. Schedules may be amended, developed, added and withdrawn with approval from the Strategic Group or their delegated representatives.

17. Schedules will be reviewed at the same time as the review of this MoU, or as identified and required by the Strategic Group.

18. A list of the current schedules will be attached at Appendix 1 of this MoU.

Media communication

19. The parties recognise the confidentiality and sensitivity of information concerning active investigations by either party.

20. No public comment will be made or report issued concerning any matter referred between the parties, joint investigations, or prosecutions under this MoU without prior consultation with the other party.

21. Where, for reasons of urgency or statutory obligation, it is not possible or is impractical to obtain prior consent, the party commenting will inform the other party of the public comment as soon as practicable after making the comment or releasing the report.

Communication

22. All correspondence and notices required by this MoU will be directed to the Primary Contacts.
23. Any reference to "meeting" in this MoU includes a meeting held by videoconference, teleconference, or by any other means the parties consider appropriate.

Costs and services

24. The costs of meeting the general commitments of this MoU must be met by the party incurring the cost.
25. However, where one party seeks specialist resources from the other (for example handwriting analysis or forensic accounting expertise etc), subject to the availability of resources, this will be made available by the other party.

Dispute resolution

26. The parties will attempt, in the first instance, to resolve all issues, disputes or differences concerning the interpretation or performance of this MoU locally and at the earliest opportunity.
27. If agreement cannot be reached within a further period of 28 days then the matter will be referred, in writing, to the Commissioner of Police and the Director of the SFO for their resolution.

Termination

28. Either party may terminate this MoU by providing three months notice in writing to the other party.

Variations

29. Except as stated within this MoU, this MoU can only be varied through a written agreement duly signed by the Primary Contacts and appended to this MoU. All variations will be reviewed through the three yearly review process as if they were embodied within the MoU.

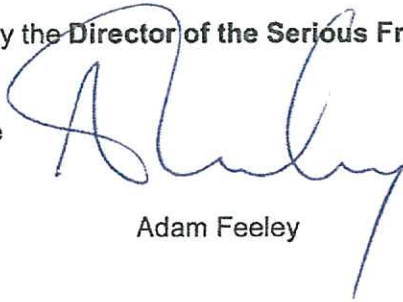
Conditions

30. Nothing within this MoU makes either party liable for the actions of the other, nor constitutes any legal relationship between the parties.
31. The provisions in this MoU must be read subject to any Chief Executive, or Cabinet directives, and any enactment.

32. Where there are changes in Government policy which affect the purpose and functions of this MoU, the parties agree to inform the other of those changes at the earliest possible time thereafter and agree to re-negotiate, where necessary, any aspects of this MoU that are affected by the policy change.
33. The parties acknowledge their individual responsibility to ensure effective internal communication of this MoU and associated Schedules to all those staff who have a requirement to be aware of its content.

Signed by the Director of the Serious Fraud Office

Signature



Date: 29 / 9 / 11

Name

Adam Feeley

Signed by the Commissioner of Police

Signature



Date: 29 / 9 / 11

Name

Peter Marshall

APPENDIX 1

List of Current Schedules

Schedule 1	Parties Representatives
Schedule 2	Referrals, joint investigations & prosecutions
Schedule 3	Arrest procedures
Schedule 4	Financial Crime Group
Schedule 5	Interpol
Schedule 6	Bribery and Corruption
Schedule 7	Secondments

Schedule 2 – Referrals, joint investigations and prosecutions

Introduction

1. This Schedule records the policies to be followed to manage inter-agency referrals, joint investigations and prosecutions.

Inter-agency referrals

2. Where one party receives information from the other that may fall within the other party's area of responsibility, the Primary Contacts, or their nominees will meet within 10 working days to jointly assess the material to determine which party will deal with the matter, or whether there should be a joint agency investigation.

Joint investigation and prosecution

3. Where it is agreed that a joint investigation should take place, the primary contacts will assign an appropriately skilled person from each of the parties to act as lead representatives.
4. The lead representatives will be responsible for developing and agreeing an Investigation Plan, and determining whether charges should be jointly laid by one party acting on behalf of the other.
5. If the lead representatives determine that charges should be jointly laid by one party acting on behalf of the other, the lead party will initiate the prosecution.

Conflict resolution

6. The parties acknowledge that there may be circumstances where the taking of a prosecution by one party in its area of primary responsibility may preclude or seriously jeopardise the subsequent taking of a prosecution by the other party in its area of primary responsibility, whether by reason of exposing the accused to double jeopardy, excluding the use of critical evidence, or delaying a prosecution to the point that it is rendered unfair or unjust.
7. Where either party believes that the decision of the other party to lay charges will give rise to a circumstance referred to in Schedule 2 clause 6, the following procedures will be undertaken:
 - the matter will be considered by the Primary Contacts within 10 working days to agree which charges will be laid by which party and the timeframe within which those charges will be laid;

- if the Primary Contacts are unable to reach an agreement, the Dispute Resolution process outlined in clause 26 of the MoU will apply and the matter will be referred to the Commissioner of Police and the Director of the SFO for their resolution.

Communication

8. Police's point of contact for this Schedule is the Assistant Commissioner Investigations and International or his nominee. The contact details for the incumbent are listed in Schedule 1.
9. The SFO's point of contact for this Schedule is the General Manager, Fraud Detection and Intelligence or his nominee. The contact details for the incumbent are listed in Schedule 1.

Schedule 3 – Arrest procedures

Introduction

1. This Schedule records the policies and procedures to be followed to manage arrests.
2. The parties acknowledge that SFO Investigators do not have a power of arrest. Consequently there will be occasions when Police assistance is sought to arrest a suspect.
3. Where such assistance is sought to arrest a suspect, the SFO will contact the District Crime Manager for the area in which the suspect resides. Upon contact, the District Crime Manager will arrange to provide assistance and, wherever possible, make available an experienced member of the Criminal Investigation Branch for that purpose.

Arrests without warrant

4. The SFO will provide to the Police Officer assigned to facilitate the arrest, a written report that outlines the sufficient level of evidence necessary to make an arrest pursuant to section 315(2)(b) of the Crimes Act. This includes providing any key documentary evidence for inspection.
5. The report will identify the rationale for arrest as opposed to summons or other means of initiating a prosecution. Police must be satisfied that appropriate grounds exist for an arrest to be made, before any Police action is commenced.
6. Once a suspect has been arrested, the following procedures will be followed:
 - the SFO will be responsible for preparing an Information for each offence
 - the Charge Sheet should state: "arrest on behalf of the Serious Fraud Office"
 - the suspect file is to be coded as '2Z Other Service' and is to include the SFO and the arrested person's particulars as subjects on the Cover Sheet
 - the '2Z' file number will be entered in the file number field and 'ZSFO' in the prosecution agency (PROAG) field. The Information for the arresting offence is to be completed with the SFO Investigator's name as the person swearing the Information and their title is to read "Designated Member of the Serious Fraud Office" where the word "Constable" would usually appear, and
 - SFO staff will be responsible for swearing all Informations at Court, including the initial arrest information.

Arrest with warrant

7. On some occasions, arrests by Police on behalf of the SFO will be pursuant to a warrant to arrest.
8. To obtain a warrant to arrest, the SFO will be responsible for laying the Information and seeking a warrant to arrest in lieu of summons.
9. Once issued, the warrant to arrest will be referred to Police for action.
10. A copy of the warrant and any other correspondence will be retained by Police and placed on the Police file.

First appearance

11. The SFO will be responsible for having counsel attend all court appearances following such arrests.

Schedule 4 – Financial Crime Group

Introduction

1. This Schedule records the principles and procedures unique to the relationship between the SFO and the Financial Crime Group (FCG) of the New Zealand Police.

Asset Recovery

2. When commencing each investigation, the SFO will consider whether there is potential for asset recovery action under the Criminal Proceeds (Recovery) Act 2009. When cases are identified that may be appropriate for criminal proceeds recovery action, that case will be referred to the National Manager Financial Crime Group (NM: FCG).
3. The NM: FCG and the SFO will assign lead representatives to be responsible for liaison in respect of each recovery matter referred to Police under this Schedule.
4. The lead representatives will act in good faith and:
 - the SFO will provide all information relevant to asset recovery action to Police as soon as possible. All information will be shared in accordance with the terms of the SFO Act
 - Police will keep the SFO lead representative apprised in advance of recovery actions that may impact on any SFO investigation, and
 - no party will take action which may compromise either party's investigations, without consulting the other party. For the purposes of this clause, Schedule 2, clauses 6 and 7 apply.

Police Financial Intelligence Unit

Sharing of information and Intelligence

5. The parties agree to share information and intelligence in relation to existing or contemplated investigations which:
 - involve offending or suspected offending within the terms of the Financial Transactions Reporting Act 1996, or the Anti Money Laundering Counter Financing of Terrorism Act
 - is information or intelligence held by the SFO on their Intelligence Database, or
 - is information or intelligence held by the Police on their National Intelligence Application (NIA).
6. Requests for information and intelligence by the parties are to be made in writing. Where time constraints dictate, a verbal request may be made but these must be followed up in writing.

7. Requests for the Financial Intelligence Unit should be directed to the Manager, Financial Intelligence Unit. Requests for the SFO should be directed to the SFO's Liaison Officer. The contact details for the incumbents are listed in Schedule 1.
8. Police and the SFO endeavour to provide the information sought as soon as possible, but within five working days of the request.
9. Intelligence received by one party from the other party must not be used in judicial proceedings or disclosed to a third party without first gaining agreement from the other party.
10. Both parties will respect and adhere strictly to any security endorsement or caveat (including any Government Security Classification), attached to any intelligence provided by the other.
11. Ownership of intelligence will remain with the originating party.

Communication

12. The SFO's point of contact for this Schedule is the General Manager, Fraud Detection and Intelligence. The Secondary contact is the General Manager, Fraud, Bribery and Corruption. The contact details for the incumbents are listed in Schedule 1.
13. Police's point of contact for this Schedule is the NM: FCG or his nominee. The secondary contact is the Manager, Financial Intelligence Unit. The contact details for the incumbents are listed in Schedule 1.

Schedule 5 – Interpol

Introduction

1. This Schedule records the policies and procedures unique to the relationship between the SFO and the New Zealand Police representatives of Interpol.

Extradition

2. The SFO is responsible for preparing all correspondence and presenting evidence in extradition proceedings relating to their investigations.
3. The Officer of Charge of Interpol will assist the SFO with preparation of their extradition documents and will send the relevant correspondence to the overseas law enforcement agency where the offender is to be arrested. Note: This only applies to Part 4 Extradition countries - Australia and the United Kingdom at present. Extraditions from any other countries are a full diplomatic process and SFO will need to arrange these directly with Crown Law.
4. Police will assist with the escort of any offender back to New Zealand. The number of Police officers required for an escort will be determined by a risk assessment process in consultation with the relevant carrier.
5. Police travel, meal and accommodation costs associated with an extradition will be met by the SFO.

CusMod (the Interpol managed border alert system)

6. From time to time the SFO may wish to place CusMod monitor alerts or arrest alerts on parties subject to investigations or contemplated investigations.
7. SFO will send Interpol sufficient information by facsimile or email to enable the requested alert to be loaded into the CusMod system. SFO's Business Support Officer (whose details appear at Schedule 1 to this MoU) will be responsible for maintaining a register of all alerts loaded.
8. Interpol will promptly load the requested alert, or contact the SFO if insufficient information has been provided.
9. SFO will ensure that all alerts are modified or cancelled when appropriate.

International Requests

10. From time to time the SFO may seek assistance from Interpol with informal international enquiries that do not require the use of the provisions of the Mutual Assistance in Criminal Matters Act 1992. In such

situations the SFO will direct such enquiries to the Officer in Charge of Interpol at Police National Headquarters. The Officer in Charge of Interpol will endeavour to assist the SFO with such enquiries promptly.

Communications

11. The SFO's point of contact for this Schedule is the General Manager, Fraud Detection and Intelligence. The incumbents' details are listed in Schedule 1.
12. Interpol's point of contact for this Schedule is the Officer in Charge of Interpol. The incumbents' details are listed in Schedule 1.

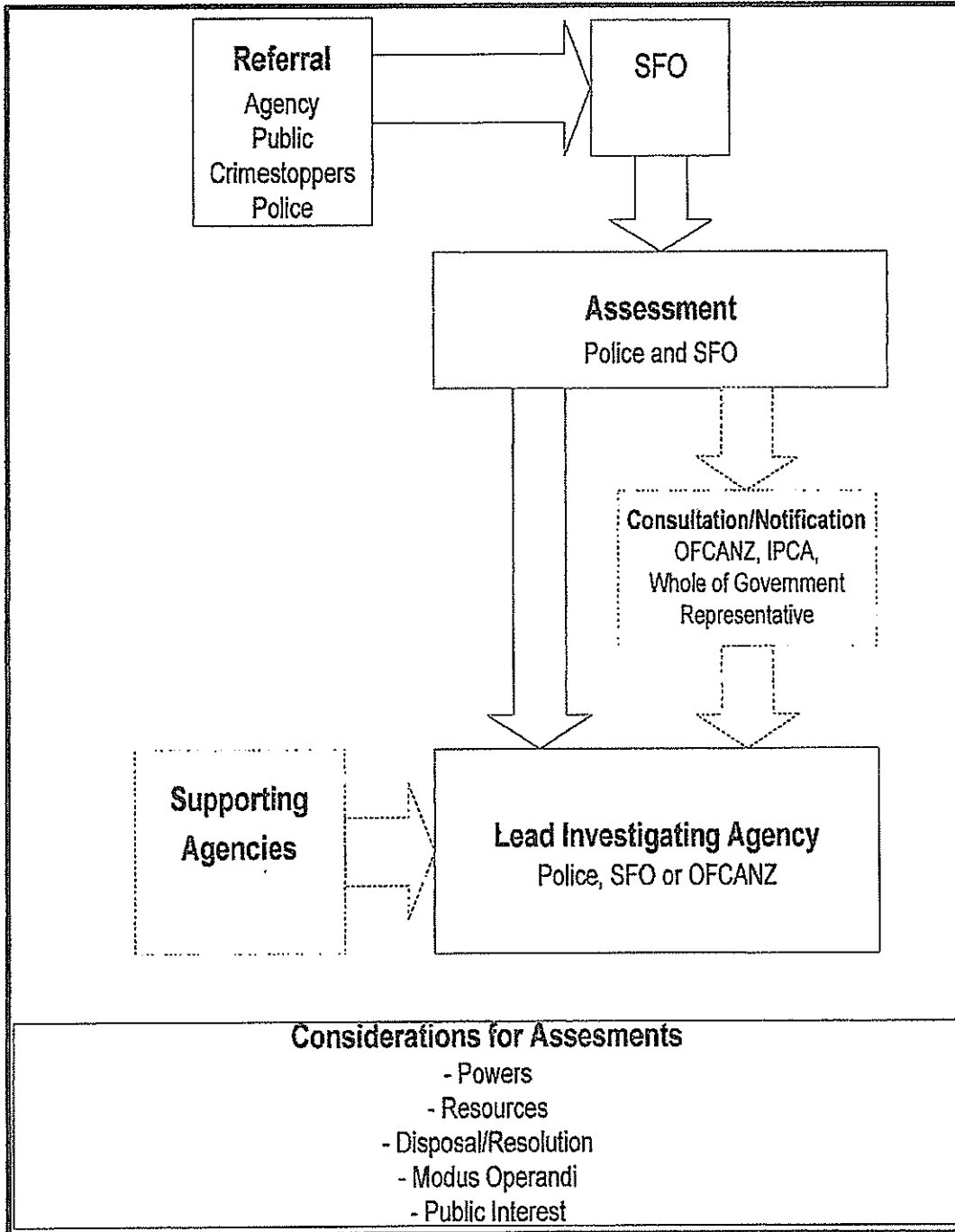
Schedule 6 – Bribery and corruption

1. This Schedule outlines the processes for reporting and enforcing corruption and bribery offences. These processes are to be adopted by the SFO and Police to ensure there is a consistent approach to corruption reporting, investigation and enforcement in New Zealand.
2. This Schedule has been developed to assist New Zealand's compliance with the Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and to support ratification of the United Nations Convention Against Corruption.

Referral process

3. All bribery and corruption offences are to be referred to the SFO, who will act as a 'single window' for bribery and corruption reports.
4. The SFO, within 10 working days of receiving the report, will contact Police, to jointly assess and determine which agency should have the lead in investigating the allegation.
5. Where appropriate, the Independent Police Conduct Authority will be notified by Police.
6. This process will not affect criteria for which agency leads individual investigations, or alter agencies' investigative mandates or roles.
7. Decisions on which agency should lead each investigation will be determined in line with agencies' mandates and roles with consideration to where appropriate powers lie, resources, public interest, disposal/resolution and the modus operandi and type of offence. The response may be multi-agency to ensure that the lead investigating agency has access to the strengths of the other law enforcement agencies.
8. Where Police receive notifications of bribery or corruption, for instance, through the Crimestoppers anonymous tip-off line, this information will be referred to the SFO to initiate a joint assessment process.
9. The referral process to be followed for bribery and corruption cases is outlined in the process map on page 20 of this MoU.

Reporting process map



Response

10. Corruption allegations are to be thoroughly investigated by the appropriate law enforcement agency in line with that agency's policies and procedures. Where the report involves or originates from another government agency, that agency should be represented as part of the investigation process as much as appropriate.
11. Specific corruption offences are found in the Crimes Act 1961 and the Secret Commissions Act 1910.

Communication

12. The SFO's point of contact for referrals of bribery and corruption cases is the SFO Liaison Officer. The SFO's point of contact in regards to the joint assessment of reports is the General Manager, Fraud Detection and Intelligence. The contact details for the incumbents are listed in Schedule 1.
13. Police's point of contact for bribery and corruption cases is the Assistant Commissioner Investigations and International or his nominee. The contact details for the incumbent are listed in Schedule 1.

Schedule 7 – Secondments

1. From time to time each party may second staff to the other party for an agreed period of time. This schedule sets out the policies in relation to these secondments.
2. During the period of secondment, the seconded employee will remain employed by their home organisation, and will return to their home organisation at the completion of their secondment.
3. The seconded employee will continue to be subject to their original terms and conditions of their employment, except where modified by agreement between the parties and the seconded employee (and recorded in a Secondment Agreement).
4. Each secondment will be documented in an agreement between the parties and the seconded employee, using the standard terms and conditions set out in the Secondment template in the Appendix to Schedule 7.

Communication

5. The SFO's point of contact for this Schedule is the General Manager, Corporate Services. The contact details for the incumbent are listed in Schedule 1.
6. Police's point of contact for this Schedule is the National Manager Human Resources or their nominee. The contact details for the incumbent are listed in Schedule 1.

APPENDIX TO SCHEDULE 7

External secondment agreement

The Secondee	<name>
Home Position	<title of the position> This is the position held by the secondee in their Home Business Unit
Home Business Unit	<name of the Home Business Unit> This is the business unit the secondee normally works in and will be seconded from.
Host Business Unit	<name of the Host Business Unit> This is the business unit the secondee is being seconded to.
Host Position	<title of position> This is the position to be occupied by the secondee in the Host Business Unit. A <position description / set of objectives> is attached as Appendix One.
Home Manager	<name of Home Manager> This is the manager of the Home Business Unit that the secondee reports to in their Home Position.
Host Manager	<name of Host Manager> This is the manager of the Host Business Unit that the secondee will report to during their secondment.
Term of secondment	The period will be from <start date> to <end date>. The term can be varied by mutual agreement, however if the secondment is completed earlier than expected, the secondment will end. No less than two weeks notice will be required by the secondee, the Host Business Unit and the Home Business Unit.

Purpose of external secondment	The purpose of the external secondment is to <describe purpose>.
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Benefits of the secondment:

• Secondee	<describe benefits>
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• Host Business Unit	<describe benefits>
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Performance Management

The Host Manager and the secondee will be jointly responsible for:

- negotiating a performance agreement within four weeks of the secondment commencing;
- seeking and giving regular feedback;
- preparing for and conducting a performance assessment at the conclusion of the secondment.

The annual performance appraisal may need input from both the Home Manager and the Host Manager.

Total Remuneration	The secondee's total remuneration per annum is <\$annual Total Remuneration>.
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Allowance additions	Allowances the secondee will receive during the period of their secondment are <detail the relevant allowances>
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Allowance removals	Allowances the secondee will cease to receive for the period of their secondment are: <detail the relevant allowances>
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Reimbursement of Costs	The secondee may claim reimbursement for the following costs if they are additional costs and are incurred as a direct result of the secondee undertaking the external secondment: <detail types of costs>
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Hours of Work	<number of hours per week>
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Leave	Where the secondee has access to the NZ Police intranet they will submit accurate timesheets via the NZ Police database on a weekly basis.
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	Where the secondee does not have access to the NZ Police intranet [agree on the mode by which the secondee will submit timesheet records]
Terms and Conditions	As per existing employment agreement <name of applicable agreement>
Use of Powers	Unless otherwise specified, Police secondees will retain their Police powers during the course of the secondment to the SFO. However, access to NIA by Police secondees is not permitted.
Induction	An induction will be provided to the secondee at the commencement of the secondment.
Conclusion of secondment	The secondee will return to his/her Home Position on a full-time basis, unless during the secondment period he/she makes application for and accepts another position within NZ Police or leaves the NZ Police.
Early Recall from Secondment	It is agreed that the Home Business Unit can call on the secondee for assistance with critical issues where the secondee's absence could jeopardise the working of the Home Business Unit. This early recall will not exceed a total of five days during the secondment period unless agreed to by both the Host Business Unit and the Home Business Unit.
Code of Conduct, policies, procedures and practices	During the term of secondment the secondee will abide by the requirements (including confidentiality) set out in the Code of Conduct, policies, procedures and practices of both the Home Business Unit and the Host Business Unit. Any possible conflict of interest will be brought to the Host Business Unit's attention for discussion, which may also involve the Home Business Unit as required.
Health and Safety	The Host Business Unit's work environment will meet the requirements of the NZ Police Health and Safety Policy. The secondee has on-going responsibilities to take appropriate steps to avoid harm and to bring any health and safety issues to the Host Business Unit's attention.

Mandatory Safety
Training
Requirements

To safely fulfil the requirements of the Host Position, the
seconded requires current certification in the current areas
(tick as applicable) before the secondment can commence:

- Staff Safety Tactical Training
- First Aid
- Custodial Suicide Prevention
- Driving Certification
- PCT*
- Other <describe>

* PCT IS NOT REQUIRED FOR COMMISSIONED
OFFICERS

Applying for
Positions

The Home Business Unit and the Host Business Unit
recognise that the seconded is entitled to apply for advertised
positions during the period of secondment.

I have read the External Secondment Agreement and accept the terms and
conditions as stated.

Seconded

Name (print):
Signature

QID:
Date: / /

Manager of home business unit

Name (print):
Signature

QID:
Date: / /

Manager of host business unit

Name (print):
Signature

Date: / /