

AGREEMENT

ENTERED INTO BY AND BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA through its
DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION
[HEREIN REFERRED TO AS “**the DPSA**”]
DULY REPRESENTED BY IN HIS/HER
CAPACITY AS
duly authorised thereto

and

..... (**Pty) Ltd/CC**
Company/CC Registration Number:

OR

Name:
Id No:.....

[HEREIN REFERRED TO AS “**the SERVICE PROVIDER**”]
DULY REPRESENTED BY IN HIS/HER CAPACITY
AS
duly authorised thereto by a Resolution of Directors/Members dated
....., attached hereto marked

ANNEXURES

- A.
- B.

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise indicates—

“**Agreement**” means this agreement, comprising all the parts and annexures attached hereto or referred to in the agreement, together with all change control notes and other amendments executed by the parties in writing;

“**Executing authority**” means the political head of a department;

“**Person designated by the Director-General**” means the Recruitment and Selection specialist in the SMS Unit in the DPSA; or if he/she is not available then the Director: Senior Management Service or the Chief Director: Employment Practices and Career Management in the DPSA;

“**Personnel**” means any employee, agent, Service Provider, sub-contractor or other representative of the parties;

“**Services**” means the services to be provided by the Service Provider in terms of the Agreement;

“**Senior Management Service**” or “**SMS**” means those personnel as defined in the Public Service Regulations, 2001 (as amended);

“**Service Provider Training Manual**” means the manual to be provided by the DPSA to the Service Provider that sets out the elements of the assessment exercises and how they should be administered, scored, interpreted and integrated and;

“**User department**” means a department that employs members of the SMS that are subject to the provisions of the Public Service Act, 1994.

“**working days**” means any day, except Saturdays, Sundays and public holidays, in terms of the Public Holidays Act, 1994 (Act 36 of 1994), and shall be calculated exclusive of the first and inclusive of the last day.

1.2 In the Agreement, unless the context otherwise indicates—

- (a) the masculine includes the feminine;
- (b) the singular includes the plural; and
- (c) any reference to a natural person includes a juristic person.

1.3 The headnotes to the clauses of the Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.

2. APPOINTMENT

- 2.1 The DPSA hereby appoints the Service Provider to provide the services set out in the Agreement and the Terms of Reference. Such services shall be provided in accordance with the Agreement, the Terms of Reference and the workplan. If any conflict exists between the Agreement and the Annexures, the Agreement shall prevail.
- 2.2 The Service Provider shall ensure that the person or persons who provide the services under the Agreement are suitably qualified, experienced and able to carry out the work required.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement takes effect on 1 January 2007 and terminate on 31 December 2007.
- 3.2 The Parties may, subject to their respective prescripts for extension, in writing agree to extend the term of the Agreement.

4. PAYMENT

- 4.1 The Service Provider shall be paid by the user department for services rendered based on a standard fee of R4 570-00 (VAT included).
- 4.2 Any other services as may be agreed with the user department shall be charged separately at R600-00 per hour.
- 4.3 A sliding scale shall be applicable in the case of more than one delegate assessment for the same/similar position on a particular day. (Refer to table below)

Cost per assessment per day as per sliding scale		
Number of assessments	Cost per assessment	Total
1	R4570-00	R4570-00
2.	R4000-00	R8000-00
3.	R3700-00	R11100-00

5. OBLIGATIONS OF DPSA

The DPSA shall:

- 5.1 be responsible for appointing a person to manage the business relationship with the Service Provider and to serve as the link between the Service

Provider and user departments ("person designated by the Director-General"). In the interests of building and maintaining a sound business relationship, the DPSA shall arrange for regular information sharing meetings between itself, contact persons of departments and Service Providers.

- 5.2 communicate with user departments the process that is involved and inform the identified contact persons in all user departments of their obligations in terms of this agreement. DPSA shall make the list of contact persons per user department available to the Service Provider.
- 5.3 be responsible for evaluating the services of the Service Provider in accordance with this Agreement.
- 5.4 provide the Service Provider with templates of all reports that are needed in terms of this Agreement.

6. OBLIGATIONS OF SERVICE PROVIDER

- 6.1 The competency assessment battery as described in the Service Provider Training Manual shall be used for all assessments that are conducted for members of the Senior Management Service of the Public Service, subject thereto that the user department has obtained the prior approval of its executing authority. These assessments may either be for selection or for development purposes.
- 6.2 The competency assessments shall be administered strictly in accordance with the requirements stated in the Service Provider Training Manual, provided that the person designated by the Director-General may approve a deviation from such requirements after consulting with all the Service Providers serving on the panel of Service Providers.
- 6.3 In addition to the Competency assessment battery referred to in clause 6.1, the Service Provider may render related services as agreed upon with a user department at a separate fee as determined in clause 4 of the Agreement. Related services include, but are not limited to, the following:
 - (a) The departmental report;
 - (b) The provincial report;
 - (c) Advice to individual SMS managers and their supervisors on the strengths and development areas that have been identified during the assessment process.
- 6.4 The parties concerned shall reduce the terms and conditions that will apply to such related services in writing. The tariffs that shall be charged for such services shall be as set out in clause 4.
- 6.5 The Service Provider shall only use assessors who are competent in assessing managers utilizing assessment center technology; and are

registered with the Health Professions council of South Africa at the level of at least Psychometrist. All personnel who are involved in the administration, scoring and interpretation of results as well as those who will be giving feedback to the candidates and writing the reports must be appropriately qualified. The following must be noted:

- 6.5.1 **Level 1:** This level of personnel will be suitable to evaluate candidates for Director and Chief Director positions. This level of personnel must have at least a Psychology Honours degree and be registered as a Psychometrist. Experience with regard to senior managerial assessments will be a strong recommendation.
- 6.5.2 **Level 2:** This level of personnel will be suitable to evaluate candidates for Deputy Director General and Director-General positions. This level of personnel must have at least a Masters degree in psychology and be registered as a Psychologist. Extensive experience with regard to senior managerial assessments will be a strong recommendation.
- 6.6 The Service Provider shall notify DPISA's Director: SMS in advance of any change in the personnel as identified in the tender documents. The personal particulars and curriculum vitae of any new personnel must be submitted to the Director: SMS. The Service Provider must ensure that any new personnel member is properly trained and is accredited in the administration, scoring, interpretation and integration of the SMS assessment battery.
- 6.7 All assessors used by the Service Provider must be registered with the person designated by the Director-General. The latter person shall maintain a database for this purpose.
- 6.8 DPISA reserves the right to at anytime assess the level of training and skills of the assessors utilised by the Service Provider and the right to observe the process during assessments.
- 6.9 The Service Provider shall not –
 - 6.9.1 employ, or offer employment to, any employees of a government department unless specifically agreed with the Director-General of the DPISA; or
 - 6.9.1 contract on a remunerative basis, or offer such contract to, any employee of a government department, while remaining such employee, to directly or indirectly provide any service in accordance with this Agreement unless such employee has received approval from his or her Executing Authority to perform remunerated work outside his or her normal duties, and unless there is no conflict of interest.
 - 6.9.2 Perform assessments utilising the SMS assessment battery for the Middle Management Service unless authorised by DPISA specifically for that purpose

- 6.10 The Service Provider must use at least one assessor for every three persons who are assessed. Less experienced assessors shall at all times be assisted by more experienced personnel. During the role-play especially, in addition to the role player, it is necessary to have an observer to observe the process. The role play must at all times be recorded on either a video or audio equipment to facilitate an independent and objective judgement during the evaluation in addition to the observer.
- 6.11 Assessments may be conducted either at the premises of the Service Provider or the offices of the relevant user department. The Service Provider shall agree with the relevant user department on the particular arrangements that will apply in each case. The Service Provider must be satisfied that the venue used for this purpose adheres with all the requirements of an assessment centre.
- 6.12 The Service Provider must conduct an interview with each candidate after the assessment to verify the assessment findings as well as to give feedback with regard to his or her performance. The feedback interview must take place on the same day of the assessment and if this is impossible, the assessor must avail himself or herself and make an alternative arrangement to give feedback at a later stage.
- 6.13 When assessing SMS employees for selection purposes the Service Provider must provide the following within three working days of the assessment:
- 6.13.1 A written comprehensive report to the relevant user department outlining the assessment results. If required an assessor shall elucidate the written report to the contact person of that user department (Head of Human Resource Management or relevant line manager) verbally.
- 6.13.2 A written report for each assessment to the person designated by the DPSA must be provided.
- 6.14 The Service Provider shall designate one of its personnel members to serve as a nodal point in attending to all inquiries that the DPSA and user departments may have flowing from this Agreement. The designated person of the DPSA and the contact persons of the user departments shall be informed by the Service Provider of the identity and contact particulars of this person.
- 6.15 The Service Provider must keep and maintain a database of all individual assessed and provide DPSA with information on the database as DPSA requires.
- 6.16 Reporting of assessment results must be done on a monthly basis. All information must be provided by the Service Provider to DPSA.

- 6.17 The Service Provider shall attend all information sharing sessions arranged by the DPSA.

7. CONFIDENTIALITY, OWNERSHIP AND COPYRIGHT

- 7.1 A Party shall treat information furnished by the other Party or another person for purposes of the execution of the Agreement, as confidential. Subject to this clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.
- 7.2 The DPSA shall become the owner of information and materials derived from the provision of services under the Agreement. The Service Provider shall submit all such information and material to the DPSA before or on the termination of the Agreement, on written request by the DPSA, without the right of retention.
- 7.3 The Service Provider shall not use any information or material derived from the provision of the services under the Agreement for any purposes other than those of the DPSA, except with the written approval of the DPSA.
- 7.4 The copyright in every work or any part thereof, in which copyright may subsist, created by the Service Provider, or any person performing work on the Service Provider's behalf, in the execution of the Agreement shall vest in the State and such works or part thereof, may only be reproduced, or disclosed to another person, with the written consent of the DPSA. The term "works or any part thereof", shall not be interpreted to include a work or part thereof in which copyright already vests in the Service Provider or another person and not created in the execution of the Agreement.
- 7.5 Copyright of the Senior Management Service Assessment Battery belongs to the DPSA. The Service Provider is expected to protect the content and ideas as contained in the assessment battery. The assessment battery may not be used for assessments other than required for the purposes of this Agreement. The assessment battery may also not be duplicated other than as required for the purpose of this Agreement.
- 7.6 The Service Provider may use any experience or learning acquired in the execution of the Agreement, provided that such use may not be to the detriment of the DPSA.
- 7.7 This clause is severable from the Agreement and shall remain in effect when the Agreement terminates for whatever reason.

8. BREACH

If a Party is in default or breach of any obligation which arises in terms of the Agreement and that defaulting Party fails to remedy such default or breach within 7 working days after receipt of a written notice given by the aggrieved Party calling upon the defaulting Party to remedy such default or breach, then the aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law—

- (a) claim specific performance;
- (b) cancel the Agreement, such cancellation to be effective immediately on receipt by the defaulting Party of a written notice to that effect; or
- (c) claim any money due and payable in terms of the Agreement and claim damages from the defaulting Party.

9. INDEPENDENT CONTRACTOR

The Service Provider is employed as an independent contractor and not as an agent of the DPSA and has no authority to bind or represent the DPSA in any matter.

10. GOOD FAITH AND REASONABLENESS

In their dealings with each other for purposes of the Agreement, the Parties—

- (a) undertake to act in good faith and reasonably; and
- (b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the rights or obligations of each other.

11. CONFLICT OF INTEREST

11.1 Neither the Service Provider nor their personnel shall engage in any activity which conflict with or could potentially conflict with the services to be provided in terms of the Agreement.

11.2 The Service Provider shall notify the DPSA immediately of any activities or circumstances which give rise to or could potentially give rise to such conflict of interest and shall inform the DPSA how the Service Provider intends dealing with such conflict.

12. INDEMNITY

The Service Provider indemnifies the DPSA against any claims or court actions, including all legal costs in respect thereof, that may be instituted by any person against the DPSA arising out of any act, omission or default

on the part of the Service Provider or, any person performing work on behalf of the Service Provider, in the provision of services under the Agreement.

13. FORCE MAJEURE

- 13.1 *Force majeure* shall be considered to be circumstances where the performance of any obligation in terms of the Agreement are suspended or postponed by-
- (a) strikes or lock-outs or any combination thereof by employees of either of the Parties;
 - (b) war or civil commotion;
 - (c) any cause, except as may otherwise be provided for in the Agreement, beyond the reasonable control of either of the Parties; and
 - (d) any natural disaster.
- 13.2 If the completion of any obligation be delayed as a result of *force majeure*, the Party who is unable to perform its obligation shall, within 7 working days of the occurrence of such *force majeure*, give notice thereof in writing to the other Party and request an extension of time in which to comply with its obligation. On receipt of such notice and supporting particulars of the claim, the other Party may in writing grant an extension of time as may be justified.
- 13.3 The Party who is incapable of performing its obligation shall not be liable for any such claim which the other Party may have as a result of such obligation not being performed provided that the reason why it cannot perform its obligation is due to *force majeure* and provided further that the notice referred to in 13.2 has been duly delivered.
- 13.4 In the event of *force majeure* continuing for a period of 7 working days, either Party shall be entitled to terminate the Agreement by written notice to the other Party and without any Party incurring any liability to the other Party.

14. TERMINATION

- 14.1 The DPSA may terminate the Agreement without prejudice to any of its rights upon the occurrence of any of the following:
- (a) On commencement of any action for the dissolution and/or liquidation of the Service Provider, except for purposes of an amalgamation or restructuring approved in advance by the DPSA;
 - (b) the Service Provider receives a court order to be placed under judicial management or to commence liquidation procedures that is not withdrawn or struck out within five working days;
 - (c) the Service Provider informs the DPSA that it intends to cease performing its obligations in terms of the Agreement;

(d) the Service Provider informs the DPSA that it is incapable of completing the Services.

14.2 The Service Provider shall receive remuneration for the services provided to the satisfaction of the DPSA up to the date of termination of the project.

14.3 Termination of the Agreement shall relieve the DPSA and the Service Provider of their respective obligations in terms of the Agreement.

14.4 The Service Provider shall not be entitled to advance a right of retention or any similar right if the Agreement is terminated in terms of this clause.

15. GENERAL TERMS AND CONDITIONS

15.1 INTERPRETATION OF AGREEMENT

The law of the Republic of South Africa shall govern the interpretation of the Agreement.

15.2 JURISDICTION OF COURTS

If any legal proceedings arise from the provisions of the Agreement, both Parties submit to the jurisdiction of the courts of the Republic of South Africa.

15.3 ENTIRE CONTRACT

The Agreement and the Annexure attached hereto constitute the entire contract between the Parties.

15.4 VARIATION

No amendment, alteration, addition or suspension of any provision of the Agreement shall be of any force, unless reduced to writing and signed by both Parties.

15.5 WAIVER

No waiver of any right in terms of the Agreement shall be binding for any purpose unless expressed in writing and signed by the Party concerned and such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right precludes any other or further exercise thereof or the exercise of any other right.

15.6 CESSION

A Party may not cede any right or obligation in terms of the Agreement to another person without the other Party's written consent.

15.7 INVALID PROVISIONS

If any provision of the Agreement contravenes any provision of the law, that provision shall be deemed to be void or the scope of the provision shall be deemed to have been limited to exclude such contravention, provided that if any Party—

- (a) can establish in a court of law that it is adversely affected or prejudiced thereby; or
- (b) unsuccessfully relies on that provision in any legal proceedings, that Party may terminate the Agreement immediately.

15.8 INTERVENING CHANGES IN LAW

If any change in the law renders any material provision of the Agreement illegal or void, either Party may terminate the Agreement immediately.

15.9 SEVERABILITY

If any provision of the Agreement is or becomes invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto* and the remainder of the Agreement shall be regarded as valid and binding unless materially affected.

16. **DOMICILIUM CITANDI ET EXECUTANDI**

- 16.1 DPISA chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

(Insert details)

- 16.2 The Service Provider chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

(Insert details)

- 16.3 Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its *domicilium citandi et executandi* to another physical address.

- 16.4 Any notice in terms of the Agreement shall either be—
- (a) delivered by hand during normal business hours of the recipient; or
 - (b) sent by prepaid registered post to the address chosen by the addressee.

16.5 A notice in terms of the Agreement shall be considered to be duly received if—
(a) hand-delivered on the date of delivery;
(b) sent by registered post as indicated in clause 16.4(b), 10 days after the date it was posted, unless the contrary is proved.

16.6 Notwithstanding anything to the contrary contained or implied in the Agreement, the written notice or communication actually received by one of the Parties from the other, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

THUS DONE AND SIGNED BY THE DPSA AT ON THIS DAY OF2006

AS WITNESSES:

- 1. _____
- 2. _____

.....
**For THE DPSA
being duly
authorised hereto**

**THUS DONE AND SIGNED BY THE SERVICE PROVIDER AT
..... ON THIS DAY OF
..... 2006**

AS WITNESSES:

- 1. _____
- 2. _____

.....
**For SERVICE
PROVIDER being
duly authorised
hereto**