Shadowmatch Subscription Agreement

Between

De Villiers Bester and Associates cc
Registration number **2008/044971/23**
Hereafter referred to as **DBA**

and

Company Name: _____

Registration number: _____

VAT number: _____

Physical Address: _____

_____

_____

Hereafter referred to as '**the client'**.

Whereas the client wishes to subscribe to the use of the Shadowmatch system.

1.   Interpretation:

1.1   In this agreement unless otherwise indicated –
i.   any expression which denotes male will include female and single will include plural and vice versa;
ii.   any reference to the client will include all employees, contractors and subcontractors employed or contracted by the client.

2.   Definitions:

"Agreement" means this Shadowmatch subscription Agreement;

"**Shadowmatch system**" means the internet based system, utilised to create benchmark profiles, interview packs, Shadowmatch profiles, Personal Development Programmes (PDP's), job specifications, matching reports, introduction reports, personal reports, team profiles, team reports and relationship reports;

"**Worksheet invitation**" means the link or digital key allowing an individual to gain access to the Shadowmatch system for purposes of creating a Shadowmatch profile and making it possible to use the results from the Shadowmatch worksheet in all the different functionalities of the Shadowmatch system;

"**Shadowmatch worksheet**" refers to a series of situational questions and answers enabling the data subject to indicate his / her preferred behavioural patterns;

"**Use of the Shadowmatch System**" means that the client is granted the rights to use the systems functionalities for which it was intended for the period of the contract;

"Data" means the electronic representation of information in any form.

"Data subject" means any natural person in respect of whom personal information has been requested, collected, collated, processed or stored, by the Shadowmatch system

"Data profile" or **"Data Results"** mean the habit/behavioural pattern profile created by the Shadowmatch system based on the information provided by the data subject.

"Subscription Fee" refers to a monthly fee (including VAT) paid by the client to DBA for access to and use of the Shadowmatch system.

"Services" refers to all value content provided by DBA through the functional capabilities of Shadowmatch, customer service interventions, research and development and the release of the new functionalities for the Shadowmatch system. It also refers to possible custom development(s) on the system for the client, developments in general, consulting advisory actions as well as training, team building and any related advisory deliverables.

"Term" shall mean a period of **12 (twelve)** months from the commencement date.

3.   Duration:

3.1.   This Agreement shall commence on _____ and shall continue for a Term unless terminated by either party by giving 60(sixty) days written notice of termination to the other party. Should no notification of termination be received, the contract will renew automatically after the Term until such time that one of the parties gives written notification of termination of the contract.

3.2   The client may at any stage prior to the expiry of the Term give notice of renewal of this Agreement in writing to DBA.

3.3   In the event that the client elects not to renew this Agreement at the end of the Term, the client can keep access to the existing data on the system at no additional cost. For any new usage the client can elect to move over to another pricing option (PAYG or Bulk Purchase) agreement.

3.4   In the event that the client terminates this Agreement before the end of the Term, the client can obtain access to the existing data for a reduced monthly cost for the remainder of the duration of the term. Thereafter the client can obtain access to the existing data as stated in clause 3.3.

4.   DBA rights and obligations:

4.1   DBA shall during the subsistence of this Agreement grant the client unlimited access and use of the Shadowmatch System in accordance with the conditions as provided in clause 5.

4.2   DBA shall ensure that the Shadowmatch system interruptions are kept to a minimum and shall provide the client with system support at all times, during the subsistence of this Agreement.

4.3   DBA shall not cede any of its obligations under this Agreement without the client's consent, which consent shall not be unreasonably withheld.

4.4   This Agreement shall be in respect of _____ (_____) employees only (contract workers included). DBA shall be entitled to request proof of the number of employees at any time

during the contract period should the number of employees exceed the contracted number of employees. No employee, employed by the client, shall be regarded as an applicant for employment. Maximum number of worksheets per annum: 3 times the number of employees. Maximum number of PDPs per annum: 1.5 times the number of employees.

4.5   DBA reserves the right to withhold access to the Shadowmatch system should the client be in breach of any contractual conditions hereunder.

4.6   DBA reserves the right to process all data and data profiles captured by the Shadowmatch system for research and development purposes. The data will be processed anonymously and no personal information will form part of the research outcomes. The research results are used for trend analysis to enable further enhancements of the system and optimize and expand the reports generated by the system.

4.7.   Save for the provision of access and use to the client, DBA shall further provide the client with consulting services if and when necessary. A separate agreement shall be entered into in respect of the consulting services to be rendered.

5.   Client obligations:

5.1   The Client is only authorised to use the Shadowmatch system for the interest of the client and the client will ensure that no worksheet invitations or system usage will be made available to anybody for any purpose that is not in line with the purpose that Shadowmatch was intended for.

5.2   The client will ensure that worksheet invitations to individuals not employed by the client will only be for recruitment purposes.

5.3   The Client is not authorised to on-sell or make available any Shadowmatch worksheet invitations and / or any part or right to use the Shadowmatch system to any individual, business or organization outside of the client in whatever format for whatever purpose.

5.4   The Client shall not cede any rights in terms of this Agreement without the consent of DBA which consent shall not be unreasonably withheld.

5.5   The Client will ensure that the Shadowmatch system is used in the manner it was intended for as outlined in the Shadowmatch online training modules. Furthermore the Client will ensure that the worksheets are used in accordance with applicable instructions.

5.6   It is the client's obligation to ensure that all employees with access to the system complete the online Shadowmatch training and understand the terms of use of the system before using it.

6.   Intellectual property:

6.1   The Client acknowledges that any and all of the trademarks, trade names, copyrights, patents, data, data profiles and other intellectual property rights used or embodied in or in connection with the Shadowmatch System belong exclusively to and shall be and remain the sole property of DBA and save as set out herein, nothing contained in this Agreement shall be construed so as to confer on the Client any copyright or other intellectual property rights in respect of any particular Services provided by Shadowmatch to the Client.

6.2 The Client acknowledges that all rights in any copy, translation, update, upgrade, adaptation or derivation of the Services including without limitation any improvement or development thereof belong exclusively to and shall be and remain the sole property of DBA.

6.3 The Client shall not, in any manner, copy, remove, alter or in any manner whatsoever, tamper with any copyright and/or other proprietary notice of DBA. Nothing contained in this Agreement shall be construed so as to confer on the Client any copyright or other intellectual property rights in respect of any particular services or the use of any system provided by DBA to the Client.

6.4 DBA acknowledges that any and all of the trademarks, trade names, copyrights, patents, data, and other intellectual property rights used or embodied in the Client belong exclusively to and shall be and remain the sole property of the Client.

6.5 DBA undertakes to indemnify and hold the client harmless against any claim instituted by a third party against the client, for infringement of copyright of such third party in respect of any of the Shadowmatch system copyright and intellectual property.

7. Pricing:

In consideration for the access and use on the Shadowmatch system, the client shall pay a Subscription fee of
R _____**.**____ (_____ rands) exclusive of VAT for 12 months. Payments shall be made within 30 (thirty) days after receipt of an invoice from DBA. A price increase of 5% will be effective annually on renewal of the contract.

8. Declaration of authority:

8.1 The undersigned hereby declare that they have the necessary authority to enter into an agreement on behalf of the client.

Signed: _____

Name: _____

Designation: _____

Place: _____ **Date:** _____

Witness Signature: _____ **Witness Name:** _____

8.2 The undersigned hereby declare that they have the necessary authority to enter into an agreement on behalf of De Villiers Bester and Associates CC.

Signed: _____

Name: _____

Designation: _____

Place: _____ **Date:** _____

Witness Signature: _____ **Witness Name:** _____