

# MODERNISATION PROGRAMME

# BLUEPRINT

# FORENSIC INVESTIGATIVE UNIT

30 October 2009

Ref. no.: M.P. 7/3



Provincial Government Western Cape



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# 1. INTRODUCTION

## 1.1 Background

### 1.1.1 Project definition

This workstream reviewed the current status of the forensic investigative service with a view of transforming it into a service that is strategically positioned to be able to effectively fulfil its mandate in relation to –

- investigating effectively alleged economic crime (fraud, theft and corruption) as well as maladministration
- reporting effectively to highest possible authority, and
- raising awareness of economic crime and maladministration to enable departments to effectively detect and report on the same.

### 1.1.2 Scope of the work

The following were included in the scope of this workstream:

- To confirm the existence of this unit as a centralised unit
- To formalise the mandate of the Forensic Investigative Unit (FIU) and to regulate the working relationship with departments
- To create the basis for establishing a highly skilled professional forensic service for PGWC;
- To emphasise proper processes of evidence retention and safeguarding, including physical space and suitable storage space and/or accommodation
- To identify crucial tools to assist in the execution of forensic investigations, and
- To develop the strategy that would enhance relationships with stakeholders.

### 1.1.3 Problem statement

During the inception of this process, a Terms of Reference had to be compiled stating the current situation resulting in the challenges being experienced by the FIU. The Terms of Reference documented words the challenges as follows:

- The existence of the service is not derived from a specific piece of legislation and no written mandate is in place. The current

relationship with provincial departments is not governed by any agreement.

- The current organisational structure is not enabling effective delivery of the forensic service in light of the following:
  - Inability to attract people with the right skills and expertise
  - Inability to retain the investigators who were trained during the course of their duties
  - Inability to pro-actively engage and create awareness as a result of the inadequate organisational structure
  - Inability to render specialised forensic services
  - The lack of an enforceable requirement to provide feedback of issues raised in a forensic report. This results in no oversight role from the highest authority and the inability to provide proper statistical feedback to relevant government institutions.
  
- There exists a potential to enhance the relationship with management to become a strategic partner.
  
- The opportunity exists to enhance the current methods of collating evidence to maintain its credibility.
  
- The service needs to be enhanced by adequate tools to improve the service.
  
- The relationship with stakeholders e.g. law enforcement agencies and other state institutions could be improved to help combat economic crime in the Province and ultimately in South-Africa.
  
- Inappropriate level of current forensic investigations (monetary value involved vs. required effort) resulting in no substantial value being received for money or effort spent on investigations.

#### **1.1.4 Legislative Framework**

The promulgation of legislation such as the Public Finance Management Act, 1999 (Act 1 of 1999) (PFMA), the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) and the Protected Disclosures Act, 2000 (Act 26 of 2000) provides evidence of Government's commitment *inter alia* to:

- Improve financial management and management policies and practices within the public sector

- The principles of good corporate governance
- Show those who seek to defraud the Government that such action is unacceptable and will not be tolerated
- Deter corrupt individuals and businesses
- Deter potential corruptors/corruptees by demonstrating a holistic and integrated approach to fighting corruption and a consolidation of the institutional and legislative capabilities of government, and
- Improve access to mechanisms for reporting wrongdoing and protection of whistle-blowers.

Although a number of law enforcement and criminal justice agencies are involved in fighting corruption, the investigation and prosecution of which are intrinsic to the functions of the South African Police Service, the Specialised Commercial Crime Unit and the National Prosecuting Authority, this is inadequate given the extent and nature of the problem. The co-operation and involvement of the public sector is vital if crime of this nature is to be adequately addressed.

Given the basic role of a forensic investigative component in the PGWC, being to facilitate the prevention, detection and investigation of economic crime among public employees of the PGWC, a centralised service of this nature supports the Government's commitment to fighting economic crime, and, more particularly, corruption. The establishment of a centralised unit ensures that individual departments are able to focus their efforts and resources on their core functions.

## **2. METHODOLOGY**

### **2.1 Methodology applied by the workstream**

In the conduct of the work of this workstream, the following processes were followed:

- For the development of the mandate, this workstream mainly used existing research conducted by Deloitte in 2005. In addition to this, information shared by other provinces, specifically Mpumalanga, relating to the FIU mandate was used.
- During the development of the operational processes and generic Memorandum of Agreement the existing processes were documented, weaknesses or improvements in these processes were identified and certain improvements were taken into account in the drafting of the final operational processes.

Interviews with role-players like Legal Services and interactions with the Steering Committee were furthermore used to guide the focus of this workstream.

- Interactions with Organisational Development assisted in the formulation of an ideal organisational structure, and all recent and relevant PSC resolutions were used in the calculation of the financial implication.
- Interactions with the Department of Transport and Public Works took place to assist in the determination of the cost relating to the upgrade of the evidence room.

### **2.1.1 Bibliography**

Deloitte, Review and Development – Policies and Procedures of the Directorate: Forensic Audit, 28 February 2005.

## **3. KEY FINDINGS**

The workstream established the following in respect of the FIU:

- The unit did not have an approved mandate that provides the basis for the services provided to departments.
- The unit did not use the Memorandum of Agreements to regulate the relationship with and services provided to departments.
- Due to the lack of a mandate, a standard Memorandum of Agreement, as well as commonly accepted operational processes, the FIU did not have the necessary means to report instances of non-compliance or follow-through by respective departments to a higher authority resulting in accountability not being enforced.
- Operational processes in place did not support or enable the FIU to adequately address the services to be delivered, the efficiencies in this process (including turnaround times) and accuracy or usefulness of reports issued.
- Due to the informal assessment of cases reported, the FIU did not have a structured approach to decide which cases would be handled internally and which ones would be referred to external service providers, i.e. an appropriate service-delivery model.
- The current centralised placement of the FIU needed to be assessed.
- The current structure of the FIU does not make provision for the appointment or retention of experienced and skilled staff that are able to render forensic services of a high quality.

- The FIU did not have the necessary tools available to deliver optimally.
- Due to a lack of experienced and skilled staff at the FIU, the reports issued are not always contributing to the successful implementation of recommendations by departments and follow-through of recommended disciplinary actions.
- The current accommodation is inadequate for the specific requirements of the FIU.

## **4. DISCUSSION**

### **4.1 Mandate**

The FIU did not have an approved mandate that regulated the services provided to the departments in the Province. This workstream finalised the mandate it deemed best for the current circumstances.

The objective of the mandate is to outline the authority, independence, responsibility and reporting lines of the FIU. It furthermore imposes the duty on the FIU to create ethical awareness among all employees and to provide them with training to align their behaviour with objectives of the Provincial Government.

The mandate furthermore purports to establish formal reporting lines to various role-players in instances where progress on implementation is not acceptable. It also makes provision for the signing of memoranda of agreement specifically adapted to suit the need of particular departments to ensure that service delivery and co-operation is properly regulated.

Refer to Annexure A for the final proposed mandate.

### **4.2 Operational processes**

Adequate operational processes were not in place and lack a “follow-through” of findings, resulting in departments not implementing FIU recommendations. This resulted in a very low implementation percentage of recommendations made as there was no formal reporting mechanism available to the FIU for registering non-compliance with recommendations. The workstream redefined and formalised the significant operational processes as well as the reporting lines in the FIU on a high level. Refer to Annexure B for the high-level documented processes.

### **4.3 Service-delivery model**

Although the FIU will be the core unit in respect of investigating matters involving alleged incidences of financial misconduct and irregularities, instances will arise where the FIU has to obtain assistance from external experts to provide a comprehensive service.

These will relate to instances where the FIU does not possess the necessary expertise and/or capacity and the same will be obtained at the discretion of the head of the FIU.

This is achieved by a formalised step in the operational process where the Director of the Forensic Investigative Unit assesses every matter referred to determine firstly if it presents a forensic matter or an issue that could be internally addressed by the department's internal control processes and secondly if the case should be referred to an external service provider. This decision (referral to an external service provider) will be influenced by capacity available at that stage, profile of the investigation and turnaround times requested by the relevant department, where after the suitable procurement processes would be followed.

### **4.4 Placement**

Due to the strategic nature of the FIU the only option the workstream considered was to retain the centralised unit in the Department of the Premier. This is in accordance with the legal framework as explained herein above.

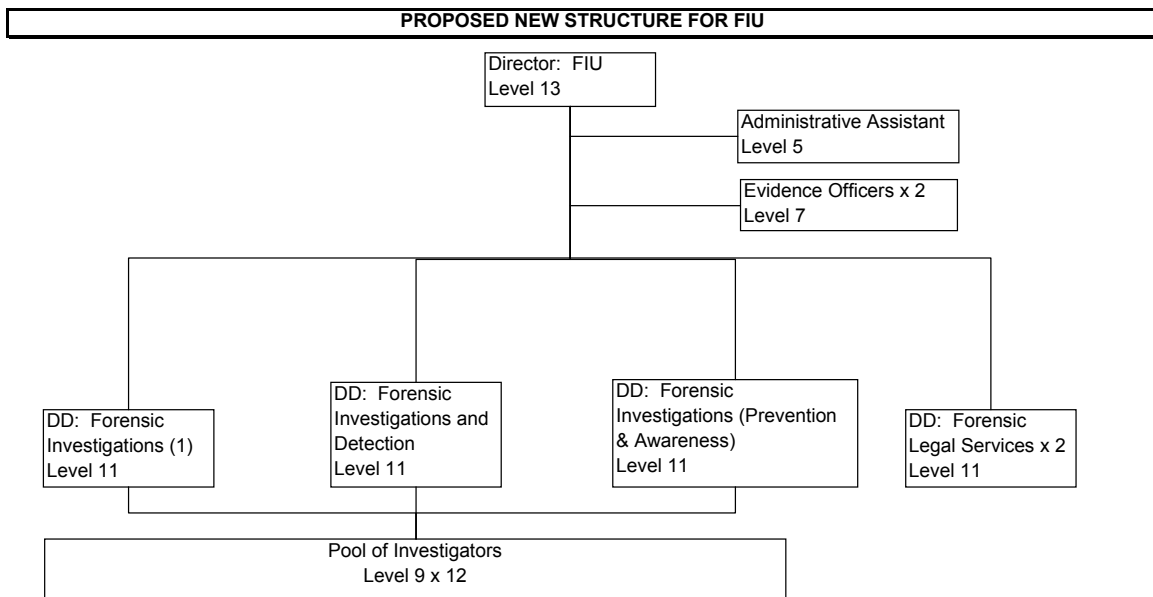
One of the most critical weaknesses in the current reporting structure is that, in most instances, no follow-through on recommendations made by FIU takes place. Departments are not held accountable if the recommendations made by the FIU are not implemented. The proposed placement, together with the recommended reporting to PTM would provide the platform for the Premier, through the Director-General, to enforce implementation.



## 4.5 Best-fit organisational structure

The analysis of the current organisational structure identified the need for staff members and/or the structure to commensurate with the complexity of allegations received, the increased number of alleged cases reported and the need for more efficient investigations. The workstream concluded that the number of Level 8s included in the current approved establishment is not feasible as constant supervision, guidance and presence of a senior person is required to assist them in the investigations, resulting in additional time to complete the investigations as well as inferior deliverables in some instances. The workstream proposed a structure mainly consisting of DDs on level 12 and forensic investigators on level 10. However, subsequent to the initial planning the workstream became aware of the DPSA Circular 2 of 2009 which, in short, states that positions of Assistant Director and Deputy Director must be advertised on salary-levels 9 and 11 respectively. Provision is, however, still made for executive authorities to continue to award a higher salary level to an employee in order to recruit highly competent and skilled employees.

The abovementioned circular forced the workstream to amend the initial structure and although an amended structure is proposed, this must be attended to in detail by the Organisational Design Workstream. The following structure is now proposed:



### 4.5.1 Motivation for proposed structure

Two (2) Deputy Directors are proposed to each head up an investigations team that would better address the current needs. It is proposed that one would be totally focused on investigating allegations received whilst the other one will play a role in co-ordinating and venturing into big investigative projects together with other law enforcement agencies to ultimately combat corruption through early detection (i.e. like pharmacies where gangs operate, bogus locum doctors, etc.) but also investigating allegations received, depending on the number of allegations at any one time and the criticality of these allegations.

One (1) Deputy Director is proposed to run the Province's prevention and awareness programme championed by the Premier, and to assist departments in the formulating and monitoring of their Fraud Prevention Plans. This person, however, should also be able to do forensic investigations and will be used for this as and when he/she is required.

Two (2) Deputy Directors are proposed as specialists (Forensic Legal Services) to scrutinise the legal framework of each investigation and review every single report for legal applicability due to the risk this unit has that, should a legal mistake be made, the entire investigation is compromised and it will furthermore not muster legal scrutiny by a court of law.

It is furthermore proposed that the current level-8 posts and other available posts be used to establish a pool of investigators on level 9 (currently it is suggested that 12 level-9 investigators be created to allow four team members for each Deputy Director of Forensic Investigations) who has the requisite experience and knowledge to conduct investigations of a high quality. In addition to this one Administrative Assistant on level 5 and two Evidence Officers/Data Processors on level 7 is proposed to assist with the normal administrative duties in the FIU, which is highly confidential and would ensure protecting the chain of evidence.

## 4.6 Advanced tools, techniques and expertise

For this unit to be successful, certain advanced tools were identified as necessary to support the operations of the unit. These tools can be summarised as follows:

Name of tool	Short description and benefit of tool
Analyst's Notebook	Analyst's Notebook is the international de facto standard software for investigative analysis. Used by law enforcement and commercial analysts throughout the world, it is recognised as being the most powerful visual tool available. It is a tool to manage and store data. It allows investigators to visualise large

Name of tool	Short description and benefit of tool
	amounts of disparate information and turn it into meaningful intelligence.
ITC	Would enable the FIU to determine who the members of close corporations are and who the shareholders of companies are. It would assist in ascertaining whether an individual has shares or interests in close corporations and/or registered companies. This is currently seen as a more advanced tool if compared with other available tools, e.g. CIPRO, which in many instances is not an updated reflection of the reality and is unreliable.
ACL	Enables comprehensive, independent testing and monitoring of transactional data to assist with the validation of controls and detection of fraud, gathering of evidence and review of findings inter alia.
Timesheet module	A module that would enable tracking of productivity and execution of tasks, providing management information for the proper management of the FIU.

The first two tools were identified as crucial necessities. The Shared Internal Audit Services already has user licences for ACL, and should it be necessary the number of licences could be increased. The workstream was of the opinion that this is, however, not a priority and that this could be catered for during the normal budgetary processes. Similarly, the timesheet module would be beneficial in the general managing of the FIU but not crucial to deliver on its mandate.

It was further the opinion of the workstream that certain specialist services, like the analysis of hard drives confiscated during an investigation, would be more cost effective to outsource should the need arise.

## 4.7 Generic Memorandum of Agreement with departments

The FIU did not previously use a Memorandum of Agreement to govern the relationship with departments and terms of the service delivered to departments. This workstream finalised the generic Memorandum of Agreement to be negotiated with each department. Refer to Annexure C for the proposed generic Memorandum of Agreement.

## **4.8 Accommodation/upgrade of evidence room**

The current premises occupied by the FIU, specifically the evidence rooms, do not provide a suitable environment for the safeguarding and protection of evidence. The lease agreement for the FIU's current accommodation has expired and no formal arrangements have been made to re-locate the FIU. The workstream recommended that the FIU be relocated to premises where evidence rooms can be created to sufficiently safeguard evidence.

When commissioning the evidence rooms, the following minimum requirements must be considered:

- steel enforced walls and doors,
- fire-proof rooms with appropriately equipped sprinklers,
- smoke detectors,
- appropriate cabinets to separate evidence of different investigations,
- design of rooms to be appropriate for intended use (i.e. have a reception desk and restricted access to evidence).

## **4.9 Stakeholder relationship strategy**

The workstream was of the opinion that this aspect, although strategically important, could be attended to when the more crucial changes to the FIU have been implemented.

# **5. CONCLUSION**

The workstream concluded that the majority of the problems in the FIU could be corrected by addressing three aspects:

## **5.1 Mandate and Memorandum of Agreement**

To confirm the authority, independence, responsibility and reporting lines of the FIU, it is of the utmost importance that a mandate that stipulates these aspects be approved by the Cabinet. In addition to this, the level of service, responsibility of each party and relationship must be confirmed in a Memorandum of Agreement with each department.

## 5.2 Operational processes to ensure corrective action

Streamlining the operational processes and ensuring appropriate reporting lines to ensure accountability.

## 5.3 Establishment

An establishment that would allow the appointment of properly qualified and experienced individuals at market-related salaries to increase the quality of the work performed by the FIU.

# 6. RECOMMENDATIONS

## 6.1 High-level recommendations

It is requested that the Cabinet approves the following recommendations:

- Due to the strategic nature of the FIU, the current placement of the FIU in the Department of the Premier be confirmed.
- That the final mandate as included in Annexure A be approved by the Cabinet.
- That a budget be made available to obtain the two recommended electronic tools as well as the required budget for the outsourcing of services.
- That the proposed organisational structure be referred to the organisational design workstream.
- That suitable accommodation be found for the FIU and specific attention be given to the commissioning of appropriately designed evidence rooms.

In addition to the above, it is requested that the following be noted by the Cabinet:

- The operational processes in Annexure B to be implemented by the FIU.
- The generic Memorandum of Agreement included in Annexure C and that the FIU negotiate the specific terms and conditions thereof with each department.

## **6.2 Future recommendations**

- Detailed competency framework to be developed for FIU that would ensure attraction of appropriately skilled individuals.
- Develop a Stakeholder Relationship Strategy which identifies the various stakeholders and defines the communication protocols with each of the stakeholders.

# **7. HUMAN RESOURCE IMPLICATION**

## **7.1 Organisational structure**

The current organisational structure must be reconsidered by the organisational design workstream to incorporate the changes recommended in this blueprint.

## **7.2 Other implications relating to human resources**

The impact of Circular 2 of 2009 has the potential of significantly opposing the anticipated results of this workstream. The fact that no posts can be created on either level 12 or level 10 significantly impacts on the ability of this unit to recruit suitably experienced individuals (in terms of the salary scales being offered in private practices). In the light of this, the risk of failure of this unit, even if the proposed changes are implemented, is therefore still significantly high. The steering committee should note this and evaluate the proposed structure in this light.

Furthermore, due to the fact that some posts in the current approved establishment are filled, we are proposing that current incumbents are dealt with in terms of the personnel plan. A staggered appointment process is recommended which will allow for filling of positions in accordance with the available budget.

## 8. FINANCIAL IMPLICATION

### 8.1 Forensic Investigative Tools

Tool	Budget 10/11	Budget 11/12	Budget 12/13
<b>Analyst's Notebook</b>			
User licence	R70 000,00	R0,00	R0,00
Training (5 people)	R40 000,00	R0,00	R0,00
Maintenance	R0,00	R10 500,00	R10 500,00
<b>ITC</b>			
Annual fee	R3 900,00	R3 900,00	R3 900,00
Per request	R35 per request	R38,50 per request	R42,35 per request

### 8.2 Personnel structure

Although it appears that no additional funds would be required should the proposed structure be implemented, the final financial implications should be determined by the Organisational Design Workstream.

### 8.3 Upgrade of evidence room

Although a quotation was received from the Department of Transport and Public Works, the extent of the quotation was not to commission a proper facility where evidence could be safeguarded. It is therefore recommended that suitable accommodation be found for the FIU that will provide for at least two evidence rooms of 30m<sup>2</sup> each and that these be appropriately equipped with sprinklers, smoke detectors, fire-proof walls and doors and filing cabinets. Taking account the current building cost, the total cost for commissioning proper evidence rooms is estimated at R600 000,00.

### 8.4 Budget for consulting or outsourced services

Due to the nature of the services rendered by the FIU and the current need identified, it is necessary to allow for a minimum budget of R3 000 000 per year (increasing on an annual basis with CPIX) to outsource forensic investigations to appropriate service providers after following the procurement procedures. This would help to alleviate pressure in instances where critical cases are reported or where high-profile cases must be attended to.

## 8.5 Summary of budget requirements

Below is a summary of budgetary requirements that would ensure the successful turnaround of the FIU. Please note that the personnel expenditure is not a new line-item, and that this is currently in the FIU's budget.

Items	Budget 10/11	Budget 11/12	Budget 12/13
<b>Analyst's Notebook</b>			
User licence	R70 000,00	R0,00	R0,00
Training (5 people)	R40 000,00	R0,00	R0,00
Maintenance	R0,00	R10 500,00	R10 500,00
<b>ITC</b>			
Annual fee	R3 900,00	R3 900,00	R3 900,00
Per request	R35 per request	R38 per request	R42 per request
<b>Upgrade of evidence room</b>	R600 000,00	R0,00	R0,00
<b>Consulting/ outsourced services</b>	R3 000 000,00	R3 300 000,00	R3 630 000,00
<b>TOTAL</b>	<b>R3 713 900,00</b>	<b>R3 314 400,00</b>	<b>R3 644 400,00</b>



# **ANNEXURE A**

## **MANDATE**

# WESTERN CAPE PROVINCIAL GOVERNMENT

## DEPARTMENT OF THE PREMIER FORENSIC INVESTIGATIVE UNIT

### MANDATE

Version Control
Version 1
30 October 2009

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## A INTRODUCTION

1. The South African Government's commitment to fighting corruption is demonstrated by National Cabinet's identification of the following eight priorities in respect of anti-corruption:
  - i. The promulgation of the **Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004)** ("Prevention and Combating of Corrupt Activities Act"),
  - ii. The establishment of a corruption management information system,
  - iii. Strengthening departmental anti-corruption capacity,
  - iv. Establishment of a national hotline system,
  - v. Strengthening partnerships,
  - vi. Continued implementation of the Public Service Anti-Corruption Strategy,
  - vii. Roll-out of the Public Service Anti-Corruption Strategy to local government and
  - viii. Increased public communication and awareness.
  
2. Its commitment is further illustrated by the requirement to establish a minimum anti-corruption capacity in all departments and organisational components of the Public Service and the promulgation of legislation such as the **Public Finance Management Act, 1999 (Act 1 of 1999)** ("PFMA") and the **Protected Disclosures Act, 2000 (Act 26 of 2000)** ("Protected Disclosures Act"). This also provides evidence of the Government's commitment to the principles of good corporate governance, the improvement of financial management and management policies and practices within the public sector, and improved access to mechanisms for reporting wrongdoing and the protection of whistle-blowers *inter alia*.

3. In keeping with the Public Service Anti-Corruption Strategy which emphasises fighting corruption in a holistic manner and promotes preventative action, the Minimum Anti-Corruption Capacity Requirements specify the main elements of corruption prevention within departments and entities as the following:
  - Preventing and managing risks
  - Solid management systems and practices
  - Ability to report wrongdoing and protecting the integrity of the whistle-blowing system
  - Ongoing focused training of employees.
4. Departments were furthermore instructed to prepare Fraud Prevention Plans and to establish Risk Committees to give effect to the Minimum Anti-Corruption Capacity Requirements in implementing these Fraud Prevention Plans.

## **B OBJECTIVE**

5. The objective of this document is to outline the authority, independence, mandate, responsibility and reporting lines of the Forensic Investigative Unit. The document will be reviewed from time to time to ensure that the activities performed by the Forensic Investigative Unit meet with the Western Cape Provincial Government's requirements as well as best practice.

## **C AUTHORITY**

6. The Western Cape Provincial Government ("the Provincial Government") is committed to protecting its revenue and assets from any attempt, either by members of the public, contractors, sub-contractors, agents, intermediaries or its own employees, to gain financial or other benefit in an unlawful, dishonest or unethical manner.

7. The focus of the Provincial Government is concentrated on two elements in particular:

- A commitment to a policy of detection, investigation and prosecution of individual cases of fraud and other economic offences as well as non-compliance with financial prescripts and procedures to reduce risk and
- The reduction of losses through fraud and other economic offences by the rigorous implementation of fraud prevention procedures and an environment of zero tolerance.

#### **D INDEPENDENCE AND CONFIDENTIALITY**

8. The Forensic Investigative Unit may not become involved in operational functions of heads of departments. It may furthermore not be used as a tool to carry out any responsibility of Accounting Officers provided for in the PFMA, except for those specifically provided for in terms of the Memorandum of Agreements that will be entered into with the various provincial departments.

9. The Forensic Investigative Unit may not divulge any sensitive information related to a department obtained during an investigation to another department or to any other third party.

#### **E MANDATE**

10. In terms of Cabinet decision ..... the Forensic Investigative Unit is mandated to investigate matters involving the following alleged conduct, irregularities and offences:

- financial misconduct
- irregularities of a financial nature

- irregularities causing or which can possibly cause financial loss or potential financial loss (including acts of dishonesty) and/or affecting the Provincial Government to such an extent that, if allowed to continue unchecked, will/could have an extremely adverse effect on the effective and efficient operation of the Provincial Government
  - the commission of economic offences such as theft, fraud, corruption and/or any other economic common law offence or economic offences in contravention of any statutory provision which involves patrimonial prejudice or potential patrimonial prejudice to the State
  - where possible criminal offences have been committed, the forensic Investigative Unit will report the matter to the South African Police Service as agreed with the relevant department in terms of the Memorandum of Agreement.
11. The Forensic Investigative Unit may not investigate any other matter concerning statutory non-compliance or maladministration unless so authorised in writing by the Director-General of the Province.
12. Once an alleged transgression has been assessed by the Forensic Investigative Unit and found to be a case of non-compliance by officials it will be referred back to the department. Feedback on how departments have addressed these matters must be forwarded to the Forensic Investigative Unit in order to be recorded on a comprehensive database.
13. When an allegation has been made against the head of a department, the Forensic Investigative Unit may only conduct an investigation after being instructed by the relevant provincial Minister after consultation with the Premier.

14. The Forensic Investigative Unit may not investigate any matter where an allegation was made against the Premier of the Province or a provincial Minister.

## **F SEARCH AND SEIZURE**

15. In the event that reasonable grounds for a search and seizure exist, the following prerequisites are adopted:
  - a) the search and seizure must be authorised by the Head: Legal Services
  - b) the Head: Legal Services must be satisfied that, based on the available evidence, there is reason to suspect that an offence has been committed
  - c) the Head: Legal Services must be satisfied that, based on the available evidence, there is reason to believe that information will be recovered in the search and seizure to prove that an offence has been committed
  - d) to prove the aforesaid, the request for the search and seizure must be in the form of an affidavit and must be supported by the head of the Forensic Investigative Unit.
16. The Head: Legal Services must take the decision to authorise the search and seizure after consultation with the relevant head of the department. In the event that the specific head of a department is under investigation, the individual must take the decision after consultation with the Premier.

## **G PREVENTION**

17. The Forensic Investigative Unit must create ethical awareness among all employees and provide them with proper and continuous training in



an attempt to aligning individual behaviour with the objectives of the Provincial Government.

## **H REPORTING LINES**

18. Operationally the Forensic Investigative Unit must report directly to heads of the departments as stipulated in the Memorandum of Agreements. The Forensic Investigative Unit must furthermore endeavour to assist heads of the departments to achieve the objectives of departments by evaluating and developing recommendations for the enhancement or improvement of internal controls. This will be in the form of regular progress meetings and formal reports issued subsequent to each investigation. It is also expected of departments to formally report to the Forensic Investigative Unit on steps taken or measures introduced pursuant to recommendations made in reports.
19. Heads of departments must report to the executive authority of the Provincial Treasury and to the Auditor-General any criminal charges laid against any person in terms of section 86 of the PFMA.
20. Heads of departments may only provide copies of reports to any third party in accordance with the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000).
21. The Forensic Investigative Unit must report to the various Audit Committees on progress and control related aspects of cases finalised during a specific quarter.
22. The Forensic Investigative Unit must give feedback to the provincial Top Management and the Premier via the Director-General on a quarterly basis on the status of implementation of recommendations on matters finalised.

23. Administratively the Forensic Investigative Unit reports to the Director-General of the Provincial Government in terms of its normal management responsibilities and functioning. The position may change once the modernisation process has been completed.

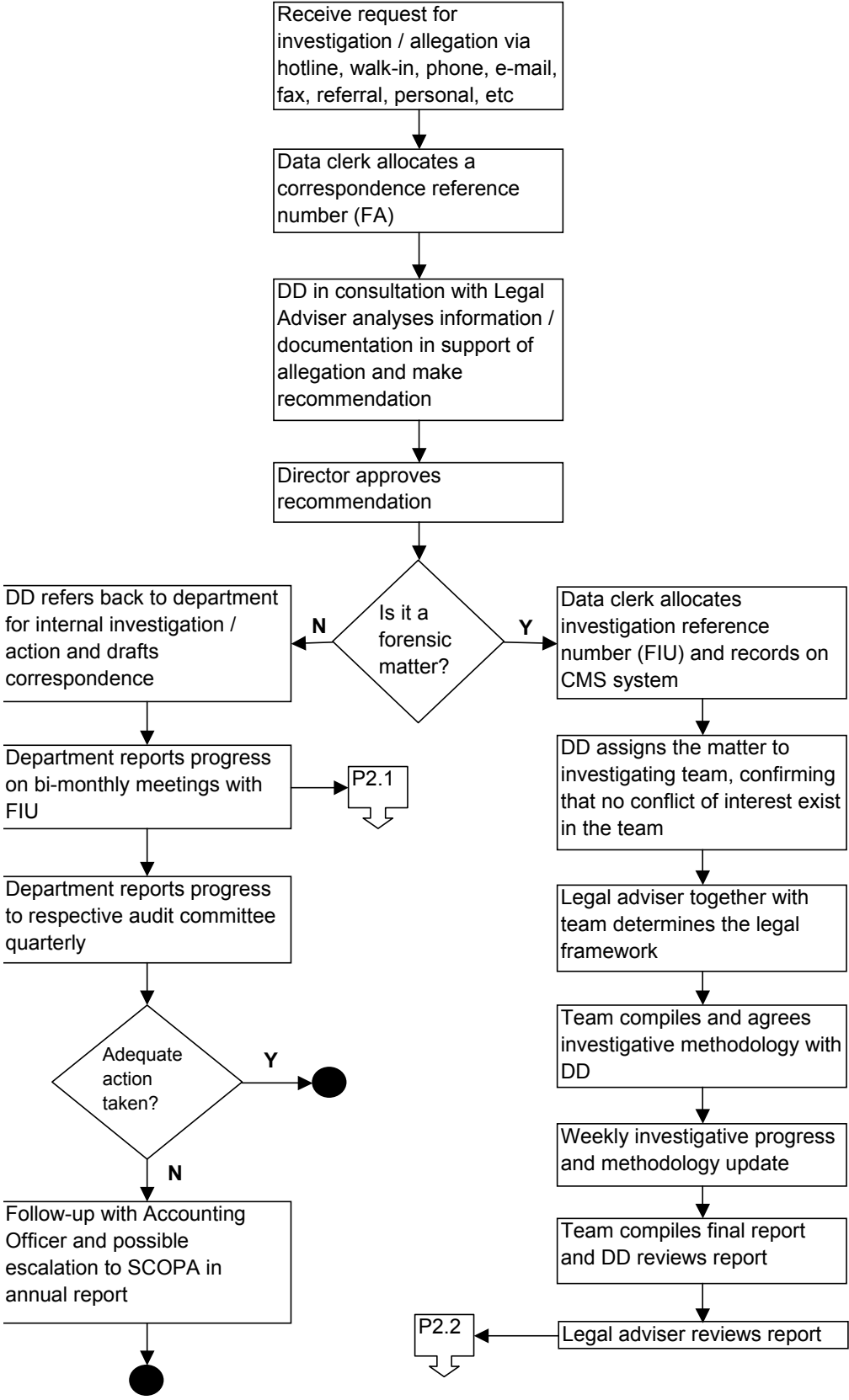
## **I AGREEMENTS WITH DEPARTMENTS**

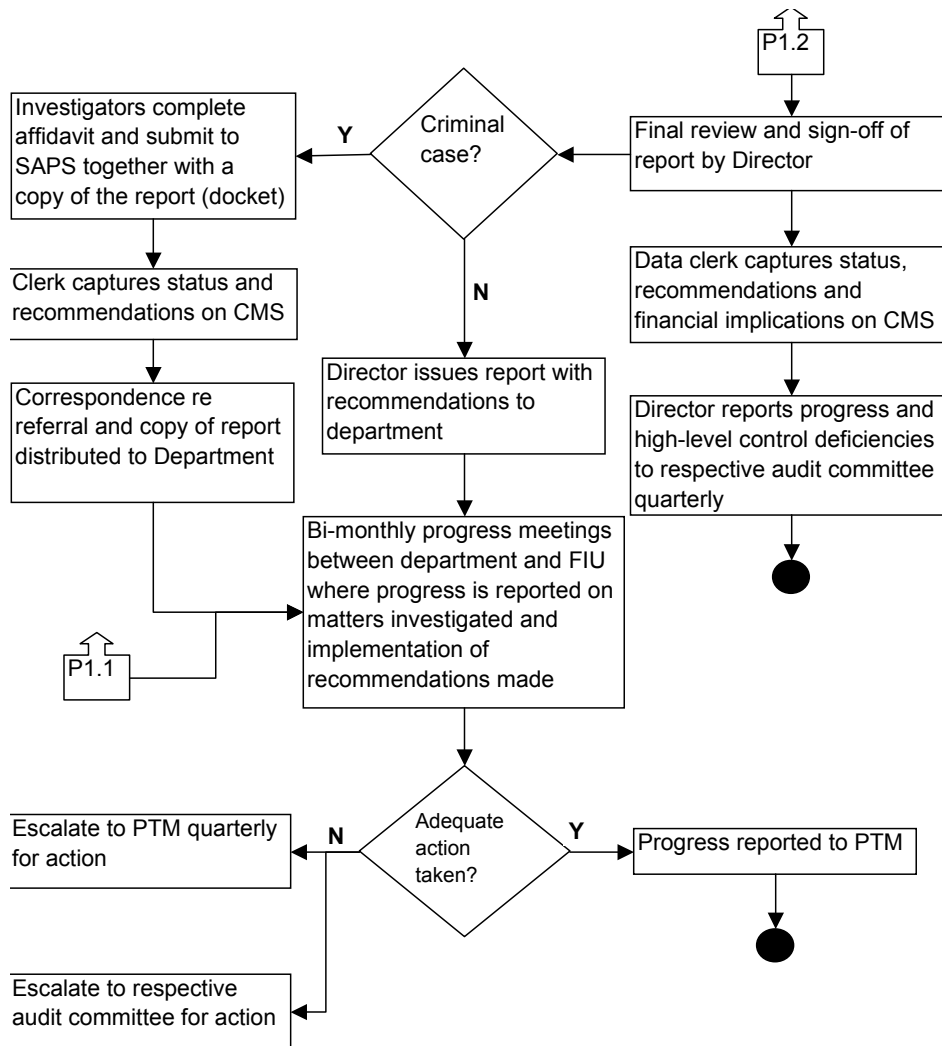
24. The implementation of this mandate will be formalised in the Memorandum of Agreements to be concluded between the Forensic Investigate Unit and provincial departments and/or other relevant bodies or entities.

# **ANNEXURE B**

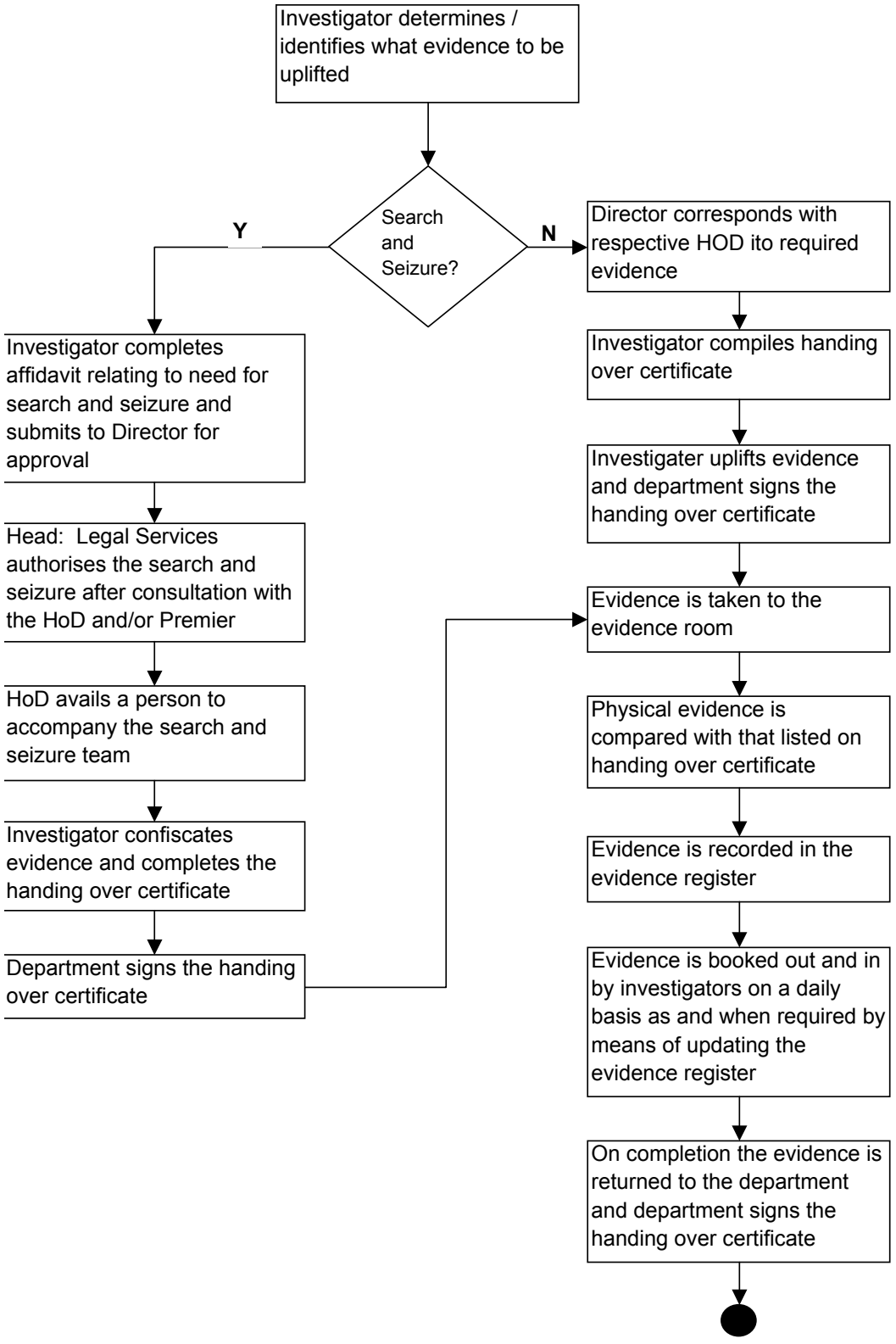
## **OPERATIONAL PROCESSES**

**FORENSIC INVESTIGATION PROCESS**

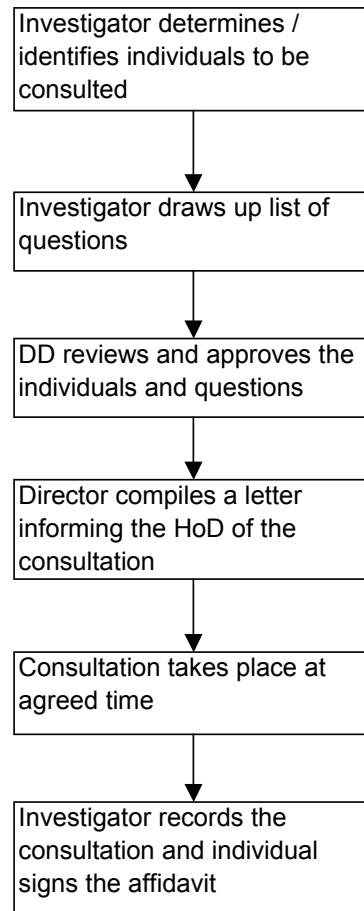




**UPLIFTING EVIDENCE**



## CONSULTATIONS



# **ANNEXURE C**

## **GENERIC MEMORANDUM OF AGREEMENT**



## **MEMORANDUM OF AGREEMENT**

Entered into by and between

### **WESTERN CAPE PROVINCIAL DEPARTMENT OF X**

(Herein represented by ... in h...capacity as the Head of the Department)

(Hereinafter referred to as "the Department")

and

### **DEPARTMENT OF THE PREMIER FORENSIC INVESTIGATIVE UNIT**

(Herein represented by .... in h... capacity as the Head: Forensic Investigative Unit)

(Hereinafter referred to as "Forensic Investigative Unit")

**PREAMBLE:**

**WHEREAS** the parties acknowledge that Accounting Officers bear onerous responsibilities in terms of the Public Finance Management Act, 1999 (Act 1 of 1999);

**AND WHEREAS** the Forensic Investigative Unit is an independent, objective centralised forensic component designed to assist the Accounting Officer to discharge his/her functions in terms of the Public Finance Management Act, 1999 (Act 1 of 1999, the "PFMA") in rooting out corruption and to add value and improve the Western Cape Provincial Government's fight against economic crime;

**AND WHEREAS** the parties have reached an agreement in terms of which the Forensic Investigative Unit will render forensic investigative services to the Department subject to and in accordance with this agreement;

**AND WHEREAS** the parties agree that this agreement gives effect to the Mandate of the Forensic Investigative Unit.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. OBLIGATIONS AND RIGHTS OF THE FORENSIC INVESTIGATIVE UNIT**

**1.1 OBLIGATIONS OF THE FORENSIC INVESTIGATIVE UNIT**

The Forensic Investigative Unit undertakes to-

- a) conduct objective and independent investigations of all matters brought to FIU's attention involving financial misconduct, irregularities of a financial nature and the commission of economic offences,

- b) refer a matter back to the department if it is assessed and found not to be a forensic matter,
- b) safeguard evidence uplifted or confiscated,
- c) report on a bi-monthly basis to the Head of the Department ("HoD") on progress on cases referred to the Forensic Investigative Unit, delays experienced and on significant trends identified,
- d) issue reports subsequent to forensic investigations to enable the Department to effectively manage incidents and take the appropriate steps to prevent recurrences thereof,
- e) refer matters of a criminal nature, after consultation with the Accounting Officer, to the South African Police Service for further investigation;
- f) testifying in disciplinary proceedings if so required,
- g) provide evidence and testifying in court cases,
- h) assist in the recovery of losses, if so required, when matters are referred to State Attorney via Legal Services,
- i) identify control-system weaknesses,
- j) provide training interventions aimed at facilitating awareness of the risks posed by offences such as fraud and corruption, and improved capacity to detect/prevent such offences,
- k) assist with promoting professional ethics amongst employees,
- l) collate and share data relating to action taken in disciplinary proceedings or criminal charges, the outcome of such action and the recovery of losses,
- m) communicate risks identified during investigations,
- n) assist with monitoring the rolling out of fraud prevention plans as required in terms of the PFMA which must include, as a minimum, an anti-corruption policy and implementation plan,
- o) assess all allegations of theft, fraud and corruption, as well as financial misconduct and irregularities of a financial nature,
- p) enable the process of conducting further investigation, detection and prosecution, in terms of prevailing legislation and procedures,

- q) receive and manage allegations of corruption through whistleblowing in terms of the Protected Disclosures Act, 2004 (Act 12 of 2004) as well as other mechanisms,
- r) provide the Department with the information to be reported to the relevant Audit Committee,
- s) report on a quarterly basis to the relevant Audit Committee providing feedback on progress and control related matters of cases finalised as well as significant trends identified,
- t) Reasonable grounds must exist to conduct a search and seizure. To ensure that reasonable grounds do in fact exist, the following prerequisites are adopted –
  - a. the search and seizure must be authorised by the Head: Legal Services of the Province,
  - b. the Head: Legal Services must be satisfied that the available evidence provides reasonable grounds for suspecting that an offence has been committed,
  - c. the Head: Legal Services must be satisfied that on the available evidence reasonable grounds exist that information will be recovered in the search and seizure to prove that an offence has been committed,
  - d. to prove the aforesaid the submission to the Head: Legal Services to request the search and seizure must be in the form of an affidavit and it must be supported by the head of the Forensic Investigative Unit.
- i) obtain feedback with regard to progress relating to recommendations made in reports issued at the bi-monthly operational meetings with relevant role players from the Department, and
- j) properly record all cases referred to the Forensic Investigative Unit in order to have the necessary statistics available.

## **1.2 RIGHTS OF THE FORENSIC INVESTIGATIVE UNIT**

The Forensic Investigative Unit is entitled to-

- a) co-source or out-source as and when necessary the skills required to conduct forensic investigations in instances of a shortage of staff or projects with a specific technical requirement, and when and as the need arises. In these cases, the Forensic Investigative Unit will contract the services of specialists. The costs of these specialists will be borne by the Forensic Investigative Unit. The appointment of specialists will be at the sole discretion of the Forensic Investigative Unit.
- b) give feedback to the Provincial Top Management and the Premier on a quarterly basis on the status of implementation of recommendations relating to matters finalised.

## **2. OBLIGATIONS AND RIGHTS OF THE DEPARTMENT**

### **2.1 OBLIGATIONS OF THE DEPARTMENT**

The Department undertakes to:-

- a) use the Forensic Investigative Unit as defined and set out in this memorandum read with the Mandate of the Forensic Investigative Unit,
- b) investigate matters referred back by the FIU and provide the FIU with feedback on the outcome thereof,
- c) involve the Forensic Investigative Unit in all projects or programmes which impact the fight against economic crime,
- d) make available all information relating to the investigation which may be requested for purposes of a forensic investigation,
- e) raise any underlying concerns,
- f) meet appointments, requests for information and deadlines for responses and recommendations, and

- g) implement recommendations made in reports issued.

## **2.2 RIGHTS OF THE DEPARTMENT**

The Department is entitled to:

- a) request forensic investigations, as it deems fit;
- b) after completion of a matter, receive evidence back in the condition it was uplifted or confiscated.

## **3. BI-MONTHLY PROGRESS MEETINGS**

Bi-monthly progress meetings will be held between the FIU and suitable representatives of the department to:

- a) discuss feedback on forensic reports issued,
- b) monitor the implementation of recommendations made in the forensic reports issued,
- c) collate data on disciplinary action taken against employees as a result of a forensic investigation,
- d) discuss transversal trends;,,
- e) monitor the implementation of Fraud Plans and operations of Risk Committees, and
- f) discuss any other agreed upon matter.

## **4. COMMENCEMENT AND DURATION**

- 4.1 This agreement will commence on the date of signature of this memorandum by both parties and will continue until terminated by the parties to this agreement.

## 5. ACCOMMODATION AND COSTS

5.1 The Forensic Investigative Unit will bear all the cost relating to or in connection with the rendering of the services to the Department. In exceptional cases it might be required of the department to bear costs for specific assignments, and this would be agreed with the HoD as and when required.

**THIS AGREEMENT IS SIGNED FOR AND ON BEHALF OF THE PARTIES AND DULY WITNESSED AS FOLLOWS:**

FOR FORENSIC INVESTIGATIVE UNIT:

FOR THE DEPARTMENT:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Designation

\_\_\_\_\_  
Designation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

AS WITNESSES:

1 \_\_\_\_\_

Name

\_\_\_\_\_

Signature

2. \_\_\_\_\_

Name

\_\_\_\_\_

Signature