

99/28

SERVICE LEVEL AGREEMENT

Entered into by and between

CAMDEBOO MUNICIPALITY

Herein represented by

Ursula Magdalena Boartman

In his capacity as

Manager : Finance

AND

CROSS ATLANTIC PROPERTIES (PTY) LTD t/a SETPLAN PE

(Hereafter referred to as the "Service Provider")

herein represented by

CAREL OLIVIER

in his capacity as

DIRECTOR



1. PREAMBLE

- A. **WHEREAS** the Camdeboo Municipality appointed Cross Atlantic Properties PTY (Ltd) t/a Setplan PE as a Service Provider for the Implementation of a Property Management System and the provision of related Software Support and Data Maintenance services
- B. **WHEREAS** the Camdeboo Municipal has entered into a Software License Agreement with the Cross Atlantic Properties PTY (Ltd) t/a Setplan PE (License Nr 106) for the use of Instant© Property Management software
- C. **AND WHEREAS** the Camdeboo Municipality requires software support services for the use of the Instant© Software and maintenance of the data contained there in.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

- a) **"the Agreement"** means this Agreement, all annexures and amendments thereto;
- b) **"the Client / Municipality"** refers to the Camdeboo Municipality;
- c) **"the Parties"** means the Municipality and the Service Provider;
- d) **"the Project"** means the totality of efforts exerted by the Service Provider in the execution of its duties and responsibilities under this agreement;
- e) **"the Service Provider"** refers to Cross Atlantic Properties PTY (Ltd) t/a Setplan PE
- f) **"working days"** will exclude Saturdays, Sundays and public holidays and will be calculated exclusive of the last day.

In this Agreement, except where the context otherwise requires:

- g) the masculine includes the feminine regarding gender sensitivity;
- h) the singular includes the plural;
- i) any reference to natural persons includes created entities (incorporated or unincorporated);
- j) the head notes to the clauses of this agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate;
- k) words and phrases defined in any clause shall bear the meanings assigned thereto;
- l) the annexure to the agreement as well as any documentation pertaining to the agreement are deemed to be incorporated herein and form an integral part of this agreement;
- m) the various parts of the agreement are severable and may be interpreted as such;
- n) the expressions listed in one clause bear the meaning as assigned hereto and cognate expressions bear corresponding meanings;

3. APPOINTMENT AND ACCEPTANCE

- 3.1 The Municipality hereby appoints the Service Provider, namely, Cross Atlantic Properties t/a Setplan PE, to execute the service(s) specified in this Agreement and the Service Provider accepts such appointment subject to the terms and conditions set out in this agreement.
- 3.2 Notwithstanding anything herein contained to the contrary, it is specifically agreed that the appointment of the Service Provider shall not create an employment contract or relationship between the parties.

4. DURATION OF AGREEMENT

- 4.1 Notwithstanding the date of signature hereof this Agreement shall be deemed to have commenced on 1 July 2011 and shall proceed until the Instant© License Agreement License Nr 106 attached hereto lapses
- 4.2 Subject to the terms of clauses 17 and 18 relating to breach and termination respectively, the terms of the Agreement will be from the date stipulated in clause 4.1 supra, unless extended in terms of clause 4.3.
- 4.3 The terms of Agreement may be extended as a result of bona fide negotiations between the parties. No extension of term shall be valid unless reduced to writing and signed by all parties.

5. RESPONSIBILITIES OF THE SERVICE PROVIDER

- 5.1 The Service Provider will execute the Project in two distinct phases:

- Implementation Phase
- Support and Maintenance Phase

5.2 **Implementation Phase:**

- The Standard Instant© installation will include the following actions:
 - Compile Instant© project as per user requirements (including standard data items)
 - Installation of Instant© on client server
 - Setting up user accounts
 - Setup financial system linkage and updating module
 - Setup Deeds updating module
 - Create base valuation project for reference purposes
 - Setup remote access to client server
 - Setup planning module
 - 2 Sessions of Systems User Training (on-site training consisting of morning and afternoon sessions catering for 10 – 15 people per training session on live Instant© installation)
 - Commissioning and Burn-in period of 15 working days
- The Instant© installation will include the following standard core data items:



- Cadastral data (Surveyor General) – auto cleaned with updates provided on a 3 monthly cycle
- Google Earth and Google Streets imagery
- Municipal and Ward boundaries (Demarcation Board)
- Primary road infrastructure (Surveys and Mapping)
- 1:20 and 1:5m contours (Surveys and Mapping)
- Municipal financial system information (Municipality) – automatically integrated on a daily basis (Dependant on provision of financial system extracts by Client).
- Deeds Office (Windeed) information (Daily Updating of Deeds data dependant on provision of active Windeed account information)

5.3 Support and Maintenance Phase

- The Service Provider will supply the following service(s) as part of the Support and Maintenance Phase of the Project:
 - Telephonic Helpdesk support relating to the Standard Instant© Installation will be available during office hours.
 - Email helpdesk support relating to the Standard Instant© Installation will be available during office hours
 - Additional support beyond the Standard Instant© Installation to include, but not limited to:
 - ♦ Loading / capturing of new spatial information
 - ♦ Printing of maps
 - ♦ Definition of new spatial and attribute queries
 - ♦ Additional training
 - ♦ etc

5.4 Miscellaneous

5.4.1 In order to achieve the deliverables as contained in clause 5.2 and 5.3 above, the Service Provider will:

- Ensure that the responsible level of care and responsibility be exercised when using items when using the items belonging to the Municipality in the performance of its duties and obligations as stipulated in the agreement.
- Ensure that progress Reports are made on regular basis;
- Exercise the highest degree of skill, care and diligence that can expected of its profession

6. Responsibilities of the Camdeboo Municipality.

6.1.1 To ensure the successful implementation of the Project the responsibilities of the Municipality are as follows:

- Designate an official (**Designated Official**) to co-ordinate the activities of the project;
- Ensure that relevant data, information and documents are made available to the service provider at reasonable time;
- Participate in meetings relating to the implementation of the Project

- Ensure that the Service Provider is paid for the services rendered within 30 days on the receipt of any invoice from the Service Provider
- Provide the following IT infrastructure / services for the Implementation and successful continuous operation of Instant@:
 - A server / dedicated PC with at least the following capacity:
 - ♦ 3GB RAM
 - ♦ 80GB free disk space (use of additional layers and aerial photographs may increase this requirement).
 - ♦ Pentium Duo Processor.
 - ♦ Windows (2000, XP, Server 2003/8, Vista) OS
 - A stable intra-net environment
 - ADSL internet access
 - Remote access to server
 - WinDeed User Account
 - Backup of Instant@ and the data contained there-in

7. BUDGET AND PAYMENT PROCEDURE – IMPLEMENTATION


7.1 The total Project Budget for the Implementation component of this Project is **R149 910.00** and is inclusive of VAT

7.2 The Progress Payment (incl VAT) shall be as follows:

<i>Progress Payment</i>	<i>(%)</i>	<i>Product</i>	<i>Time-frame</i>	<i>Amount for milestone</i>
Stage 1	50%	Data Gathering, Data Migration & System Installation	Month 1	R74 955.00
Stage 2	50%	System Integration, Customisation & Training	Month 3	R74 955.00

8. BUDGET AND PAYMENT PROCEDURE – SUPPORT & MAINTENANCE

- 8.1 The Cost for Support and Maintenance beyond the scope of the Standard Implementation (as outlined in clause 5.2 and 5.3) is calculated on a time and cost basis.
- 8.2 All support and Maintenance Fees to be invoiced on a monthly basis based on the published Cross Atlantic Properties PTY (Ltd) t/a Setplan PE's Standard Tariff of Fees (Refer to Annexure A for the 2010 rates).
- 8.3 The monthly "capped" amount for the provision of Support and Maintenance services is deemed to be **R5 000** exclusive of VAT
- 8.4 The Service Provider undertakes to obtain approval from the Designated Official at the Municipality prior to exceeding the "capped" amount for Support and Maintenance services

B3


- 8.5 Any required traveling and additional disbursements to be charged at the relevant published Department of Public Works rates.

9. LIMITS OF LIABILITY AND DISCLAIMER OF WARRANTY

- 9.1 The Service Provider makes no warranty of any kind, expressed or implied, with regard to the data and shall not be held liable in any event for any incidental or consequential damages in connection with or arising out of the use or the loss of the data contained in / provided with Instant©
- 9.2 The Service Provider makes not warranty with regard to the operating speed of the Instant© software, this being governed by the Client's operating environment (IT Infrastructure).

10. TERMS AND CONDITIONS

- 10.1 The time frames and number of days set out herein are estimates only and may be varied by Agreement between the Municipality and the Service Provider.
- 10.2 The Service Provider acts as an independent contractor and not as an agent or employee of the State and has no authority to bind the State or this local municipality.
- 10.3 Invoices shall be certified by the Service Provider that the amount claimed in the invoices is due and payable in terms of the Agreement, that the amount claimed does not cover the amounts already claimed and that the claim truly reflects the value and extent of the work performed.
- 10.4 Should the Municipality accept the invoices submitted by the Service Provider, the Municipality undertakes to certify such invoices within five (10) days of the receipt thereof.
- 10.5 Should the invoices not be acceptable to the Municipality, the Service Provider will be informed thereof in writing together with reasons for the non-acceptable of such invoices, within ten (10) days of receipt of the invoices.
- 10.6 Should the Municipality accept the invoices, payment shall be made to the Service Provider within thirty (30) days after certification.
- 10.7 Should the Municipality not be satisfied with the work done by the Service Provider, the Municipality will request the Service Provider in writing to rectify or improve the work done at the Service Provider's costs?

11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 11.1 The Service Provider undertakes to obtain the necessary consent from the proprietors or their licenses should the Service Provider make use of the intellectual property of any other person.

- 11.2 The Service Provider further indemnifies the Municipality against any claim or action (including costs) caused by and/or arising from the failure to obtain such consent.

12. NO AGENCY OR PARTNERSHIP

- 12.1 The relationship between the parties shall not imply any partnership in the legal sense, nor shall it constitute either party the agent or authorized representative of the other party.

13. ASSIGNMENT

- 13.1 Neither party shall be entitled to assign this Agreement, all or any of its rights and obligations hereunder without prior written consent of the other party.
- 13.2 Each party warrants that it is acting as a principal agent and not as an agent for an undisclosed principal.

14. INDULGENCES

- 14.1 No extension of time, latitude or other indulgence without which may be given or allowed by either party to the other shall constitute a waiver to alteration of this Agreement, or affect such party's right, or prevent such party from strictly enforcing, due to some compliance with each and every provision of this Agreement.

15. THE EXERCISE OF THE REASONABLE SKILLS, CARE AND INDULGENCE

- 15.1 The Service Provider guarantees that it will perform all its duties professionally and that all the work done by it will be of the highest standard that may be expected from a professional body in its position.
- 15.2 If, for any reason, the Service Provider finds itself incapable of completing the services as agreed in terms of this Agreement, it will notify the Client within five (5) days, stating full reasons.
- 15.3 The Service Provider shall ensure that a reasonable level of care and responsibility be exercised by all parties and individuals under its control when such parties or individuals are using property belonging to the Client in the performance of this contract and in general in the performance of the Service Provider's duties and obligations as stipulated in this Agreement.
- 15.4 The Service Provider shall maintain an efficient well-trained and qualified staff. Should the Client find any member of the Service Provider unable to perform the task to the satisfaction of the Client, the Client may, in writing and together with reasons therefore, request that he/she be replaced in order to meet the requirement of the contract.
- 15.5 Such replacement will take place within ten (10) days of receipt of the Client's request.

16. FORCE MAJEURE

- 16.1 Force majeure shall be considered to be, if the performance of any obligation in terms of the Agreement is suspended or postponed by:
- 16.1.1 Strikes or lock-out or any combination thereof by employees or either of the parties;
 - 16.1.2 fire or accident on the premises of the Client not occasioned by negligence on the part of either of the parties;
 - 16.1.3 war or civil commission;
 - 16.1.4 any cause, except as may be otherwise provided for in the agreement, beyond the reasonable control of either of the parties; and
 - 16.1.5 any act of God / nature.
- 16.2 Should the completion of obligation be delayed as a result of force majeure, the party who is unable to perform its obligation shall, within twenty (20) days of 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.
- 16.3 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 16.2 has been duly delivered.
- 16.4 In the event of force majeure continuing for a period of twenty (20) 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.

17. BREACHES OF AGREEMENT

- 17.1 Should the Service Provider dispute the existence of breach entitling the Client into the above-mentioned rights and remedies, the matter(s) in issue may be referred at the request of either party for determination by an arbitrator to be appointed in terms of clause 19 of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, and by the reasons of the financial and social imperatives underlying this Agreement the arbitrator shall be entitled to make interim order to make sure that the project proceeds and that no material delays occur.
- 17.2 The Client may terminate the Agreement should the Service Provider or any of its agents make themselves guilty of misconduct in terms of code of conduct of their profession or if the Service Provider acts dishonestly or contrary to the integrity which is required by its profession.

- 17.3 In the event of any breach by the Client of the terms and conditions of this Agreement, and in the event of the Client remaining in default after ten (10) day's written notice calling for rectification of the matter, the Service Provider shall be entitled to:
- 17.3.1 enforce strict compliance with the terms and condition of the Agreement;
or
 - 17.3.2 to cancel the Agreement
 - 17.3.3 This provision of clause 17.1 shall apply mutatis mutandis in the event of the Client disputing the existence of the breach entitling the Service Provider to the rights and remedies envisaged in 17.3.
- 17.4 If, owing to circumstances beyond the control of the Service Provider it becomes impossible for the Service Provider to fulfill any of its obligation in terms of this Agreement, the Client upon receipt of written request from the Service Provider, shall consider granting the Service Provider the necessary permission to defer such performance for such a period as is required under the circumstances, which permission shall not be unreasonably withheld.
- 17.5 In the event of the Client granting the Service Provider permission to defer performance as provided in 17.4 supra, the Service Provider shall not be entitled to payment thereof until the particular obligations have been discharged fully.
- 17.6 Should the timeframe for the performance of the work not be met due to external reasons, not attributable to either party, it will not be considered a breach of Agreement.

18. TERMINATION OF AGREEMENT

- 18.1 The Client shall have the right to terminate the Agreement without prejudice to any of its other rights upon the occurrence of any of the following cases:
- 18.1.1 On commencement of any action for dissolution and/or liquidation of the Service Provider except for the purpose of the amalgamation or restructuring approved in advance by the Client;
 - 18.1.2 If the Service Provider receives a court order to be placed under judicial management or commence liquidation procedures that are not withdrawn within ten (10) days;
 - 18.1.3 The Service Provider informs the Client that it intends to cease performing its obligations in terms of the Agreement;
 - 18.1.4 The Service Provider informs the Client that it is incapable of completing the project as described.
- 18.2 The Client furthermore reserves the right to postpone or terminate the whole or any part of the Agreement at anytime, provided that in such an event a period of

thirty (30) day's written notice, with reasons therefore, is given to the Service Provider.

- 18.3 The Service Provider shall receive remuneration for work completed to the date of any postponement or termination of the project.
- 18.4 Termination of the Agreement will relieve the Client and the Service Provider of their respective obligations in terms of the Agreement.
- 18.5 The Service Providers shall have the right to terminate the Agreement without prejudice to any of its other rights upon the occurrence of any of the following cases:
 - 18.5.1 Non payment of the project fees for a period of 90 days

19. DISPUTE RESOLUTION

- 19.1 The terms of this clause shall apply, if the parties agree in writing within five (5) days, after failure of negotiations of the parties in good faith to reach Agreement of the dispute, that the dispute be referred to arbitration.
- 19.2 The arbitrator shall be a person agreed upon between the parties and if this fails, the arbitrator shall be nominated in terms of laws that govern arbitration in South Africa.
- 19.3 The Party instituting these proceedings shall appoint the arbitrator and the arbitrator shall notify the parties beforehand of the remuneration required by him for his services.

20. GENERAL

- 20.1 This is the entire Agreement between the parties and may only be amended in writing and duly signed by both parties.
- 20.2 The Agreement shall be governed by, construed and interpreted according to the law of the Republic of South Africa.
- 20.3 The parties agree that the High courts of the Province shall have jurisdiction in respect of any matter arising from this Agreement, subject to the provisions of clause 19 relating to dispute resolutions.

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21. DOMICILIUM CITANDI ET EXECUTANDI

The parties choose the following addresses for the service of correspondence for purpose of this agreement:

**CROSS ATLANTIC PROPERTIES t/a SETPLAN PE
40 Bird Street
Central
Port Elizabeth
6006**

And


**CAMDEBOO MUNICIPALITY
Church Square
GRAAFF REINET
6280**

Either party shall be entitled, on fourteen (14) days notice to the other, to change its *domicilium* to another physical address.

Handwritten signature and initials. The signature is a stylized, cursive mark, and the initials are 'B'.

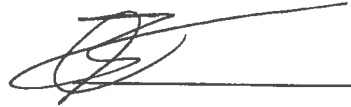
THUS DONE AND SIGNED AT Lyndy Reinet ON THIS
DAY 17th OF September 2011

FOR THE SERVICE PROVIDER



AS WITNESSES

Yuc Stydrom



Date: 7/9/2011

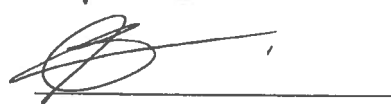
THUS DONE AND SIGNED AT Lyndy Reinet ON THIS DAY
17th OF September 2011

FOR THE MUNICIPALITY



AS WITNESSES

Yuc Stydrom



Date 7/9/2011

**Support and Maintenance
Standard Tariff of Fees
2011**

- ❖ Setplan PE's Hourly Support Rates for Instant© Software
 - Level 1 support (e.g. data capturing, map printing) – **R350/hr**
 - Level 2 support (e.g. reinstallation of data, customization of queries, data manipulation, map creation) – **R500/hr**
 - Level 3 (e.g. software engineering, development of new modules, software customization – **R650/hr**

- ❖ Any Required traveling & disbursements (printing, copies etc) to be charged at published Department of Public Works rates

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99/28

INSTANT©

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MAXIMUM NUMBER OF PROPERTIES: 15 500

MAXIMUM NUMBER OF VALUATIONS: 0

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A handwritten signature in black ink, appearing to be the initials 'BON' with a stylized flourish at the end.

Signed 


by U.M. Baartmo as Manager; France (capacity)

of Camdeboo Municipality (Client)

at Spaak Perseel on 7/9/2011

Witnesses: 



Signed 

by Carol Oliver for "The InstantGeo Consortium"

at Spaak Perseel on 7/9/2011

Witnesses: 