

24.1.14

T2/2014

# SOFTWARE MAINTENANCE & SUPPORT SERVICE LEVEL AGREEMENT

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between



**CONSOLIDATED AFRICAN TECHNOLOGIES**

Reg. No.: 2002/014493/07

Address:

EREX House  
Cnr. Geneva & Eileen Roads  
Blairgowrie  
Randburg

(hereinafter referred to as "CAT")

And

CAPE AGULHAS MUNICIPALITY  
Bredasdorp  
Western Cape

(hereinafter referred to as "the Client")

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1. **INTERPRETATION**

1.1 In this agreement, unless the context otherwise indicates:

1.1.1 **“Business Day”** means any day other than a Saturday, Sunday or Public Holiday, as defined in the Public Holidays Act 36 of 1994;

\* 1.1.2 **“Commencement Date”** means **1<sup>st</sup> February** annually notwithstanding the Signature Date;

1.1.3 **“Client Representative”** shall be **Dawid van Wyk** or such other person as may be nominated from time to time by the Client;

1.1.4 **“Parties”** means CAT and the Client;

1.1.5 **“Services”** mean the services described in clause 6 and Annexure A relating to software maintenance; and

1.1.6 **“Signature Date”** means the date when the last Party signing this agreement does so.

1.1.7 **“Remote Access”** means full Remote Desktop / RDP (Default Port: 3389) and MS SQL (Default Port: 1433) access to the remote Routemaster Africa.Net server via the internet.

1.2 Words importing the singular shall include the plural and vice versa, words importing the masculine or feminine gender shall include the neuter gender and vice versa and words importing persons shall include partnerships and bodies corporate;

1.3 The clause headings to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate; and

1.4 This agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees or permitted assigns of the Parties as fully and effectually as if they had signed this agreement in the first instance and reference to any Party shall be deemed to include such Party's estate, heirs, executors, administrators, trustees or permitted assigns, as the case may be.

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2. **INTRODUCTION**

2.1 CAT developed a custom software application for the meter reading and meter reading contracting markets referred to as the RouteMaster Africa.NET Application in Annexure A; and

2.1.1 The Client requires CAT to maintain the said software application.

2.1.2 The Client requires CAT to provide support to its staff on said software application.

3. **APPOINTMENT OF CAT**

The Client hereby appoints CAT to perform the services for the Client for the term detailed in clause 5 and CAT hereby accepts such appointment, subject to the terms and conditions of this agreement and any Annexures.

4. **RELATIONSHIP BETWEEN THE PARTIES**

4.1 For the avoidance of doubt, the Parties record and agree that for the purposes of the implementation of this agreement CAT shall at all times act as an independent contractor; and

4.2 Nothing in this agreement shall constitute an employer/employee relationship or a partnership in any shape or form between the Parties, nor authorise either of the Parties to incur any liability on behalf of the other of them, save to the extent expressly provided for herein.

5. **COMMENCEMENT DATE AND PERIOD**

This appointment shall:

5.1 commence on the Commencement Date; and

5.2 continue for a period of 12 (twelve) months (the Initial Period) and thereafter automatically renew for subsequent 12 (twelve) month periods, with the renewal date as 1<sup>st</sup> February annually

subject to the right of **either of the** Parties to terminate this agreement on 3 (three) months written notice, which notice may be given at any stage during the Initial Period or subsequent renewals.

6. **THE SERVICES**

- 6.1 CAT shall in pursuance of its appointment in terms hereof:
- 6.1.1 perform and provide the services which are detailed in Annexure A hereto;
  - 6.1.2 exercise the utmost good faith towards the Client both in carrying out its duties hereunder and also in all their dealings with the Client;
  - 6.1.3 report to the Client Representative as may from time to time be reasonably necessary or desirable in connection with the services;
  - 6.1.4 attend such meetings as may from time to time be required by the Client Representative at the Client's cost and
  - 6.1.5 exercise all reasonable skill, care and diligence in the discharge of its obligations in terms of this agreement.
- 6.2 CAT shall liaise on all matters relating to their relationship with and services provided to the Client, with the Client Representative; and
- 6.3 In the event of CAT being unable to provide any of the services, CAT shall notify the Client Representative without delay.
- 6.4 The provision of these services as described above and detailed in Annexure A is fully subject to permanent availability of Remote Access facilities into the site of the client from the client side. Should communications problems on the CAT side prevent remote access to the client machines CAT will endeavour to use alternate access into the client system or in the event of being unsuccessful provide on-site support instead.
- 6.5 Should remote access not be available due to problems on the Client side the resolution time on all logged errors will shift out by an equal amount of time compared to the downtime in the communications system.
- 6.6 Should such communications downtime persist to such a degree that it is detrimental to the Client's business the Client has the right to request on-site support that will then provided at the standard CAT engineering rate.

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7. **CONSIDERATION**

- 7.1 In consideration for the services to be rendered by CAT to the Client in terms of this agreement, the Client shall pay CAT an annual maintenance fee together with the Routemaster Africa.NET license renewal.
- 7.2 The annual maintenance fee shall be due and payable on or before the first day of the renewal of the RMA.Net license through electronic transfer into a bank account, details of which shall be disclosed by CAT to the Client in writing.

8. **CONFIDENTIALITY UNDERTAKINGS BY CAT**

- 8.1 CAT records, acknowledges and agrees that:
  - 8.1.1 during the course of its appointment in terms of this agreement, it shall become acquainted with, gain personal and in-depth knowledge of and have direct access to strategic, sensitive and confidential information of the Client (including the Client's technical and business know-how, trade secrets, confidential information, goodwill and intellectual property in general and hereinafter collectively referred to as "the Trade Secrets") which are not readily available to a competitor of the Client;
  - 8.1.2 the Trade Secrets are of crucial importance to the business of the Client and the Client accordingly has a legitimate proprietary and commercial interest therein which the Client is entitled to protect;
  - 8.1.3 should any of the Trade Secrets become available to a competitor of the Client, it could cause the Client considerable financial loss; and
  - 8.1.4 the only effective and reasonable manner in which the Client's legitimate proprietary and commercial interests in the Trade Secrets could be protected so as to avoid financial loss to the Client is by way of CAT furnishing the confidentiality undertakings provided for in clause 8.2 below.
- 8.2 In consideration of the benefits accruing to CAT in terms of this agreement and in the interest of the protection and maintenance of the Client's Trade Secrets, CAT undertakes to the Client that:

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8.2.1 it shall not during its appointment by the Client or at any time thereafter, either itself utilise and/or directly or indirectly divulge and/or disclose to any third Party (except as required by the terms and nature of CAT's appointment with the Client) any of the Client's Trade Secrets; and

8.2.2 it shall not derive any benefit, whether directly or indirectly, from the Trade Secrets, nor, without limiting the generality of the foregoing, be engaged, involved, concerned or interested, whether directly or indirectly, in the economic exploitation, whether by marketing, promoting, advertising, changing, adapting, reverse-engineering, publishing or selling in any manner whatsoever, the Trade Secrets.

## 9. INDEMNITY

9.1 CAT hereby indemnifies and holds the Client harmless against any loss, claims, demands, proceedings, damages and expenses of whatsoever nature in respect of loss of or damage to any property of any person or loss of profits or inability to operate arising during the duration of this agreement which the Client may suffer arising out the gross negligence or wilful conduct of CAT; and

9.2 The Parties agree that CAT's liability shall in all cases collectively be limited to R20000 notwithstanding the nature of the damage, loss or liability suffered or incurred by the Client.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 CAT hereby licenses and retains all rights to all intellectual property created by CAT or its agents in the scope of this agreement with the Client and such license shall be non-transferable;

10.2 CAT warrants that all intellectual property created in terms of this agreement shall be original and shall not infringe any third Party rights in any manner whatsoever; and

10.3 For purposes of this clause 10, "intellectual property" shall include, but not be limited to, copyright assets, trademark(s), trade name(s), domain names, patents or parts thereof.

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**11. FAILURE TO PERFORM**

11.1 Should either Party fail to fulfil its obligations in terms of this agreement as a result of:

11.1.1 inability to secure labour, materials or supplies despite having taken reasonable steps to procure same;

11.1.2 any act of God, war, strike, lockout or other labour dispute, fire, power failure, malicious computer code infection, power failure, network downtime, terrorism, urban terror, flood or legislation; or

11.1.3 any other cause beyond the reasonable control of the Party concerned,

then the other Party shall not be entitled to terminate this agreement prematurely, nor shall it have any claim for damages in whatsoever nature against the Party concerned.

11.2 Should either party fail to fulfil its obligations in terms of this agreement the other party shall have the right to forthwith cancel the contract with immediate effect. Notice of such cancellation needs to be provided to the affected party in writing.

**12. NO ASSIGNMENT**

Notwithstanding anything to the contrary contained in this agreement, the Client shall not be entitled to cede or assign this agreement or any of its rights hereunder without CAT's prior written consent if the assignee is a holding or associated company or a subsidiary of the Client or a fellow subsidiary company of the Client, and for the purposes hereof the terms "holding company", "associated company" and "subsidiary" shall have the meanings assigned to them in terms of the Companies Act No. 61 of 1973, as amended.

**13. EARLY TERMINATION**

Should:

13.1 either Party commit any breach of their obligations and/or undertakings in terms of this appointment and/or any other term and/or condition of this appointment, and fail to remedy such breach within a period of 5 (five) Business Days after receipt of written notice requiring it to do so;

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13.2 either Party repeatedly breach any of the terms and/or conditions hereof in such a manner as to justify the innocent Party in holding that the other Party's conduct is inconsistent with the intention or ability of such other Party to carry out the provisions of this agreement; or

13.3 either Party become liquidated or insolvent or be in the process of liquidation or insolvency,

then in all or any of such events, the other (innocent Party) shall be entitled, without prejudice to any other claims that it may have, to prematurely terminate the appointment under this agreement.

14. **ARBITRATION**

Except for interim or urgent relief, all disputes in terms of this agreement or the interpretation hereof shall be referred to confidential arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration shall be conducted in English in Randburg. Without affecting the validity of this clause, such expedited rules may be downloaded from: [http://www.arbitration.co.za/Pages/docs/expedited\\_rules.pdf](http://www.arbitration.co.za/Pages/docs/expedited_rules.pdf)

15. **CO-OPERATION**

The Parties undertake to co-operate with each other in all respects in order to give effect to the intent and import of this agreement.

16. **GOOD FAITH**

In the implementation of this agreement, the Parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of any other(s) of them.

17. **NOTICES AND DOMICILIA**

Each of the Parties chooses *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this agreement at their respective addresses set forth on the face of this agreement. For the purposes of this agreement these addresses may be changed from time to time as either party deems fit by providing notice of such address change in writing to the other party.

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18. GENERAL


- 18.1 No data message (as defined in the Electronic Communications and Transactions Act 25 of 2002), including an e-mail, SMS and recorded voice message, sent by either party to the other shall amend this agreement or the rights and duties of the Parties in any manner, unless such a data message is reduced to paper and signed by the Parties;
- 18.2 Data messages (as defined above) sent by either party to the other shall be deemed to be received by the addressee only when the addressee responds thereto, and for the purposes of this clause an auto-response shall not be regarded as a response by the addressee;
- 18.3 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this agreement or their duly authorised representatives;
- 18.4 This document contains the entire agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein;
- 18.5 No indulgence, leniency or extension of time which any Party (the Grantor) may grant or show to any other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future; and
- 18.6 The law of South Africa and the jurisdiction of the South African courts shall govern this agreement.

SIGNED at Randburg on the 22nd day of January 2014.

AS WITNESSES:

CONSOLIDATED AFRICAN TECHNOLOGIES

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2.   
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- who warrants his/her authority to sign

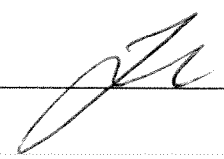
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SIGNED at Breda/so'p on the 23<sup>rd</sup> day of January 2014

AS WITNESSES:

THE CLIENT

1. 

2. 

  
- who warrants ~~his~~/her authority to sign

## ANNEXURE A

# SCOPE OF SERVICES

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1. This software maintenance contract will cover maintenance functions pertaining to RouteMaster Africa.NET and the associated Radix range of handheld meter reading equipment only.
2. CAT must respond to telephone support calls within 4 (four) working hours, tests and analyses within 48 (forty eight) hours and on-site support within 3 (three) calendar days followed by a "work-around" solution within 72 (seventy-two hours) after initiation of on-site support.
3. **Maintenance tasks are limited to the following tasks:**
  - Application **defect correction**. (Correction of latent application bugs or problems caused by implementation outside of system design specifications). Only items expressly listed in the release notes for the active version shall be deemed as implemented.
  - **Travel costs** within a 50km radius from CAT's registered place of business.
  - Normal daily **telephonic support queries** other than the items listed in 4 below.
  - **Automatic Maintenance Upgrades** of Routemaster Africa.NET via automatic update client as new releases become available.
4. **This maintenance contract will not cover the following:**
  - **Enhancements** to the existing system. This includes new reports, new screens and additional processing and validation rules not noted in the prior requirement documentation. These items will be covered under 3 above once they appear in the release notes or alternatively in the event of a feature pre-release (not being released in an official version upgrade) from the time the feature is implemented.
  - Off-site and/or secure **Data backups**, this is the responsibility of the Client. (CAT provided a scheduled task that creates a daily backup file of the database on database server's file system.)
  - Initial electronic **Data Uploads** for new business to be handled by RMA.net . (i.e. Upload of various city's databases)
  - **Travel Costs** for travel in regards to any visit to the client even for items included under point 3 above to venues outside a 50km radius from CAT's registered place of business.
  - **Data Restoration** procedures that may become necessary at any stage.
  - **Data Conversion** of existing data schemas. (For example: Unit number conversions)
  - **Training** to end-users on application usage. Any questions that are training related rather than a bug report will be charged as such.
  - **Equipment Repairs** including but not limited to repairs on all Radix handhelds, cradles and

associated cabling.

- **Custom SQL Queries** as the Client may require from time to time.

5. In cases where the above-mentioned (clause 4) exclusions are required, it will be done on a **time-and-material** basis. If any work is required in respect of this maintenance contract it is accepted that any such work may push out the scheduled delivery of non maintenance contract related matters as to remain within the parameters of this agreement. Work required outside of this maintenance contract will be charged at the ruling CAT engineering rate.
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## ANNEXURE B

# SCOPE OF IMPLEMENTATION & FUTURE WARRANTEES

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1. Implementation will be deemed to be complete once:
  - a. The Meter Reading staff has been trained on the function and use of the handhelds and problem areas pointed out to the necessary stakeholders. A detailed manual will also be provided. Support will be provided via office staff who will escalate the matter to CAT should the need arise.
  - b. The office staff who has been provided for training has been shown the use and function of the Routemaster Africa.NET system and the typical scenarios that they may encounter pointed out to them. A detailed manual in electronic format will also be provided and telephonic support will be available to the staff on an ongoing basis.
  - c. The system has been commissioned and all interfaces to the billing system checked for possible anomalies. Training will be done on data provided by the municipality so that more direct attention would be given to scenarios specific to the municipality's data.
  
2. Warrantees on equipment provided by CAT will be timed and provided as follows:
  - a. A minimum of 12 months on the Server and all hardware included with it. Certain components (items such as the hard drives) have extended warrantees up to a period of 3 years but all components carry a minimum of 12 months guarantee from the time the server is delivered to our offices from our supplier. This warranty is a carry-in warranty provided directly by our supplier Rectron Technologies located in Midrand.
  - b. A period of 12 months on the Radix Handheld computers and associated cradles from the date of implementation at Cape Agulhas Municipality. This warranty will be provided by CAT.

