

SERVICE LEVEL AGREEMENT

Entered into by and between

Cape Agulhas Municipality (Company Name)

_____ (Company Registration)

(Hereafter referred to as the "Client")

Herein represented by

Reynold Stevens (Full Name)

640423 5236 088 (ID Nr)

In his capacity as

Municipal Manager

AND

CROSS ATLANTIC PROPERTIES 0009 (PTY) LTD
2004/004700/07

(Hereafter referred to as the "Service Provider")

herein represented by

Carel Olivier (Full Name)

731129 5003 085 (ID Nr)

In his capacity as

Director

1. PREAMBLE

- 1.1 WHEREAS the Cape Agulhas Municipality is facing an increasing need for corporate access to up to date operation and management information relating to properties falling within its area of jurisdiction
- 1.2 AND WHEREAS in order to support in particular the Building Control and Town Planning Departments the Cape Agulhas Municipality is seeking to implement a cost effective, integrated and user friendly GIS based Building Control and Town Planning Information Management System with a larger view to an enterprise solution for the whole municipality
- 1.3 AND WHEREAS Cape Agulhas Municipality has appointed, through its Supply Chain Management process under Bid SCM 23/2012/13, as the Service Provider for the Implementation of the OVVIO© Software System
- 1.4 AND WHEREAS the CLIENT requires training and software support services during the use of the OVVIO© Software

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

- 2.1 Definitions
 - a) **"the Agreement"** means this Agreement, all annexures and amendments thereto;
 - b) **"the Parties"** means the Client and the Service Provider;
 - c) **"the Service Provider"** refers to Cross Atlantic Properties 0009 (Pty) Ltd
 - d) **"the Software"** refers to OVVIO© Software
 - e) **"working days"** will exclude Saturdays, Sundays and public holidays and will be calculated exclusive of the last day.
- 2.2 In this Agreement, except where the context otherwise requires:
 - a) the masculine includes the feminine regarding gender sensitivity;
 - b) the singular includes the plural;
 - c) any reference to natural persons includes created entities (incorporated or unincorporated);
 - d) 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;
 - e) words and phrases defined in any clause shall bear the meanings assigned thereto;
 - f) the annexures 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;
 - g) the various parts of the agreement are severable and may be interpreted as such;
 - h) the expressions listed in one clause bear the meaning as assigned hereto and cognate expressions bear corresponding meanings;
 - i) the signatories on behalf of the parties warrant their authority to sign;
 - j) the rule of construction that in the event of ambiguity, the contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
 - k) the termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this;
 - l) if any provision in a definition is a substantive provision conferring rights and imposing obligations on any party, notwithstanding that it appears only in this interpretation clause, effect shall be given to it as if it were a substantive provision of this Agreement.

3. APPOINTMENT AND ACCEPTANCE

- 3.1 The Client hereby appoints the Service Provider to implement the software and 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 May 2013 and shall proceed for a period of 36 months.
- 4.2 Subject to the terms of clauses 15 and 16 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 implement the Software as follows:
- 5.2 Software Installation and Training
 - a) Installation of the OVVIO® Software on the Client's server.
 - b) Provide a license to the Client for an instance of the OVVIO® software.
 - c) Provide the Client with an url to access their OVVIO® Software installation.
 - d) Setup initial user accounts.
 - e) Setup Billing System linkages based on billing system extracts provided by the Client.
 - f) Setup the Deeds updating module based on Deeds Data and Windeed account credentials provided by the Client.
 - g) Create a base valuation project for reference purposes (based on property valuation data provided by the Client).
 - h) Provide the Client with 2 sessions of Systems User Training (training consisting of morning and afternoon sessions over 2 days at a venue provided by the Client).
- 5.3 Data items included in the OVVIO® Software installation:
 - a) Cleaned and verified Cadastral data (as sourced from the Surveyor General's office)
 - b) Scanned GPS's and Diagrams (as sourced from the Surveyor General's office)
 - c) 20m and 5m contours (as sourced from Surveys and Mapping)
 - d) Road lines (as sourced from Surveys and Mapping)
 - e) Google Earth and Google Streets imagery.
 - f) Municipal and Ward boundaries (as sourced from the Demarcation Board).
 - g) Billing system information integration (based on valid billing system extracts provided by the Client).
 - h) Integration of Bulk Deeds Office data (as provided by by the Client in the original deeds office data format).
 - i) Importing of IMQS and AllyCAD data
- 5.4 The Service Provider will provide you with the following Support Services after installation and activation of the OVVIO® Software:
 - a) 40 hours of Day to day 'Operational Support' per annum for users in the use and operation of the OVVIO® Software system.
 - b) Operation Support will be provided through a Telephonic and Email based helpdesk facility which will be available during office hours (8:00-17:00 weekdays only).
 - c) Access to the OVVIO® Online Interactive Resource Center (ORC).
 - d) Software updates released during the period for which the Software has been licensed.
 - e) Bi-annual cadastral information updates as sourced from the Surveyor General's Offices.
 - f) Automated Deeds Data updates (frequency based on the Clients requirements and the provision of the Client's WinDeed credentials).
- 5.5 All support services will be conducted remotely by the Service Provider.
- 5.6 Support services are limited to the use of the OVVIO® Software and do not include data analysis, data manipulation, data cleansing services, map production, general IT hardware and software support as well as backups, re-installation and restoring of your instance of the OVVIO® Software and data.

6. RESPONSIBILITIES OF THE CLIENT.

- 6.1 To ensure the successful implementation and operation of the Software the responsibilities of the Client are as follows:
 - a) Payment of the Service Provider after completion of each milestone;

- b) Designate an officer (Designated Official) to co-ordinate the activities of the project;
- c) Ensure that relevant information and documents are made available to the Service Provider whenever they are requested;
- d) Ensure that the Service Provider is paid for the services rendered within thirty (30) days on receipt of a correct invoice from the Service Provider;
- e) Ensure that a Project Management Steering Committee is established to inter alia monitor and evaluate the progress of the project and to ensure that value for money has been created by the Service Provider during the execution of the project.
- f) Provide suitable IT infrastructure / services for the successful installation and continuous operation of the Software
- g) Enable remote access to the designated Client server
- h) Backup of the Software and the data contained therein

7. DELIVERABLES AND MILESTONES

7.1 The expected deliverables for the project are as follows:

Project Phase	Deliverables
Step 1 - Project Inception	<ul style="list-style-type: none"> • Signed contractual agreements • Assessment of existing IT infrastructure and User Requirements
Step 2 – Server Installation	<ul style="list-style-type: none"> • Installation of server
Step 3 – OVVIO© Software Installation	<ul style="list-style-type: none"> • OVVIO© Software implementation
Step 4 – Basemap creation	<ul style="list-style-type: none"> • Spatial data integration • Cleaned & Verified cadastral basemap
Step 5 – Systems Integration	<ul style="list-style-type: none"> • SAMRAS & Deeds Office integration • Collaborator Integration assessment • IMQS and AllyCAD data import
Step 6 – Training	<ul style="list-style-type: none"> • User training (2 sessions on-site)
Step 7 –Support	<ul style="list-style-type: none"> • On-going User & System Support Automated data maintenance

8. BUDGET AND PAYMENT CONSIDERATIONS

- 8.1 The total budget for the project is **R442 320.00 (Four hundred and forty thousand and three hundred and twenty Rand)** VAT included
- 8.2 Breakdown of the project amount to be paid is as follows:

Month	Product / Output / Milestone	Amount
1	Supply and commission of hardware and installation of OVVIO© Software and License	R177 270
2	Data Integration, Training and Support	R48 450
3	Cadastral Cleanup & Verification	R102 600
12	Software License (Year 2)	R57 000
24	Software License (Year 3)	R57 000
TOTAL		R442 320

- 8.3 40 hours of Software Support per annum (as defined in Section 5.4) is included in this agreement
- 8.4 Cost relating to Software Support provided beyond the 40 hour allocation per annum to be invoiced on a monthly basis based on Service Providers Standard Tariff of Fees.
- 8.5 The Service Provider undertakes to obtain approval from the Designated Official (as per Section 6.1.b) prior to providing Software Support functions beyond the allocated hours indicated in Section 8.3



9. SOFTWARE LICENSE & LIMITED WARRANTY

- 9.1 The Software is proprietary software and the use thereof is on a license basis.
- 9.2 By installing, copying, or otherwise using the software, the Client agrees to be bound by all of the terms and conditions of the Software license.
- 9.3 Upon the Clients' acceptance of the terms and conditions of this Agreement, the Service Provider grants the Client the right to use the Software:
- a) For a period of 36 months from the date of this agreement for the maximum of number of 13 000 properties
- 9.4 The Software is owned by the Service Provider and is protected by copyright law and international copyright treaty. Except as provided in this Agreement, the Client may not transfer, rent, lease, lend, sell, copy, modify, translate, sublicense, time-share or electronically transmit or receive the Software, media or documentation. The Client acknowledge that the Software in source code form remains a confidential trade secret of the Service Provider and therefore the Client agrees not to modify the Software or attempt to decipher, decompile, disassemble or reverse engineer the Software, except to the extent applicable laws specifically prohibit such restriction. If you, as the Client, purchased the License as an upgrade, it constitutes a single product together with the product that you upgraded, and may not be used to increase the total number of properties and/or valuations licensed in terms of the Software License. The Client may use the upgraded product only in accordance with this License Agreement and may not transfer the License or the upgraded product unless they are transferred together as a single product. The Client must provide safeguards to ensure that the number of properties and/or valuations does not exceed the numbers licensed in terms of the Software License.
- 9.5 Limited warranty: The Service Provider warrants that the Software, as updated and when properly used, will perform substantially in accordance with its accompanying documentation and the Software media will be free from defects in materials and workmanship, for a period of thirty (30) days from the date of receipt. Any implied warranties on the Software are limited to thirty (30) days. The Service Provider and its suppliers' entire liability and your exclusive remedy shall be, at the Service Provider's option, either (a) return of the price paid, or (b) repair or replacement of the Software that does not meet the Limited Warranty and which is returned to the Service Provider with a copy of your receipt. This Limited Warranty is void if the Software fails as a result of accident, abuse, or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
- 9.6 To the maximum extent permitted by applicable law, the Service Provider disclaims all other warranties, either express or implied, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, non-infringement or title, with regard to the Software and the accompanying documentation. To the maximum extent permitted by applicable law, in no event shall the service provider or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this software product, even if the service provider has been advised of the possibility of such damages. In any case, the service provider's entire liability under any provision of this license agreement shall be limited to the greater of the amount actually paid by you for the software product or ZAR250.
- 9.7 High risk activities: The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Service Provider and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.
- 9.8 Service Provider reserves all rights not specifically granted in this Agreement.
- 9.9 Third party software: The Software includes either the whole of or portions of various open source products distributed under various open source license agreements.
- 9.10 The Service Provider makes no warranty of any kind, expressed or implied, with regard to the quality and accuracy of the data loaded into the Software 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 and provided with the Software.
- 9.11 The Service Provider makes not warranty with regard to the operating speed of the Software, this being governed by the Client's operating environment (IT Infrastructure).

10. NO AGENCY OR PARTNERSHIP

- 10.1 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.

11. ASSIGNMENT

- 11.1 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.
- 11.2 Each party warrants that it is acting as a principal agent and not as an agent for an undisclosed principal.

12. INDULGENCES

- 12.1 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.

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

- 13.1 The Service Provider will perform its duties professionally and all work done will be of a professional standard.
- 13.2 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
- 13.3 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.

14. FORCE MAJEURE

- 14.1 Force majeure shall be considered to be, if the performance of any obligation in terms of the Agreement is suspended or postponed by:
 - a) Strikes or lock-out or any combination therefore by employees or either of the parties;
 - b) fire or accident on the premises of the Client or the Service Provider not occasioned by negligence on the part of either of the parties;
 - c) war or civil commission;
 - d) any cause, except as may be otherwise provided for in the agreement, beyond the reasonable control of either of the parties; and
 - e) any act of God / nature.
- 14.2 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.
- 14.3 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 14.2 has been duly delivered.
- 14.4 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.

15. BREACHES OF AGREEMENT

- 15.1 In the event of breach by the Service Provider of any of the terms and conditions of this Agreement, and in the event that the Service Provider fails to remedy such breach within seven (10) working days after receiving written notice from the Client to do so, the Client shall be entitled to exercise all or any of the following rights:
 - a) To terminate this Agreement without prejudice to any other rights it may have;
 - b) To suspend payments to the Service Provider;
 - c) To appoint another Service Provider to complete execution of the project

- 15.2 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 17.11 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;
- 15.3 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 his/her profession;
- 15.4 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) days written notice calling for rectification of the matter, the Service Provider shall be entitled to:
- a) enforce strict compliance with the terms and condition of the Agreement; or
 - b) to cancel the Agreement;
 - c) The provision of clause 15 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 envisages in 15.4;
- 15.5 If, owing to circumstances beyond the control of the Service Provider it becomes impossible for the Service Provider to fulfil any of his/her 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;
- 15.6 In the event of the Client granting the Service Provider permission to defer performance as provided in 15.5 supra, it is specifically recorded that the Service Provider shall not be entitled to payment thereof until the particular obligations have been discharged fully;
- 15.7 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 contract.

16. TERMINATION OF AGREEMENT

- 16.1 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:
- a) 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;
 - b) 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;
- 16.2 Both Parties have the right to postpone or terminate the whole or any part of the Agreement at any time, provided that in such an event a period of thirty (30) day's written notice, with reasons therefore, is given to the other Party.
- 16.3 The Service Provider shall receive remuneration for work completed to the date of any postponement or termination of the project.
- 16.4 Termination of the Agreement will relieve the Client and the Service Provider of their respective obligations in terms of the Agreement.

17. DISPUTE RESOLUTION

- 17.1 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.
- 17.2 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.
- 17.3 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.

18. GENERAL

- 18.1 This is the entire Agreement between the parties and may only be amended in writing and duly signed by both parties. The parties shall not be bound to any representation, undertaking or agreement unless accepted in writing by the parties.
- 18.2 The Agreement shall be governed by, construed and interpreted according to the law of the Republic of South Africa.
- 18.3 The parties agree that the Magistrate Courts of the Province of the Western Cape shall have jurisdiction in respect of any matter arising from this Agreement, subject to the provisions of clause 17 relating to dispute resolutions.
- 18.4 No waiver on the part of either party of any rights arising from the breach of the provisions of this Agreement will constitute a waiver of such rights in respect of any subsequent breach of the same or other provision.
- 18.5 This Agreement shall also be binding if each party has signed a separate copy. A telefaxed or emailed copy may constitute proof of signature

19. DOMICILIUM CITANDI ET EXECUTANDI

- 19.1 The parties choose the following addresses for the service of correspondence for purpose of this Agreement;
- 19.2 Either party shall be entitled, on fourteen (14) days' notice to the other, to change its domicilium to another physical address within the Republic of South Africa ;
- 19.3 Any notice addressed to a party at its physical address shall be delivered by hand, by prepared registered post or facsimile transmission. The parties choose the following addresses for the service of correspondence for purpose of this agreement:

THE SERVICE PROVIDER

CROSS ATLANTIC PROPERTIES 0009 (Pty) Ltd t/a SETPLAN PE
 40 Bird Street
 Central
 Port Elizabeth
 6006
 Fax: 041 585 1763

CLIENT

Cape Agulhas Municipality (Address)

1 Dirkie Uys Street (Address)

Bredasdorp (Address)

7280 (Code)

Fax: (028) 42 51 019

20. SIGNATURE OF COPIES

- 20.1 This Agreement shall also be binding if each party has signed a separate copy.
- 20.2 A telefaxed or emailed copy may constitute proof of signature.

21. SIGNATURES

FOR THE SERVICE PROVIDER

THUS DONE AND SIGNED AT Port Elizabeth ON THIS
11th DAY OF April 2013

Carel Olivier
Full Name (Director)

[Signature]
Signature (Director)

[Signature]
Witness 1

[Signature]
Witness 2

FOR THE CLIENT

THUS DONE AND SIGNED AT Bredasdorp ON THIS
11th DAY OF April 2013

Reynold Stevens
Full Name (Municipal Manager)

[Signature]
Signature (Municipal Manager)

[Signature]
Witness 1

[Signature]
Witness 2