

**MASTER SERVICES AGREEMENT**

Entered into between

**LANDYNAMIX CC**

Registration number: **2006/140439/23**

Hereinafter duly represented by

**PETER CLARKE**

In his capacity as the **EXECUTIVE MEMBER**

Duly authorised thereto

And

***Client Name***

***Registration Number: Reg Number***

Hereinafter duly represented by

***Client Contact***

In his capacity as ***Capacity***

Duly authorised thereto

(Collectively hereinafter referred to as “the Parties”)

## 1. PARTIES

### 1.1. The parties to this agreement are:-

1.1.1. LanDynamix CC, a close corporation registered and incorporated in terms of the Close Corporation Act, under registration number 2006/140439/23, hereinafter referred to as the '**service provider**'.

1.1.2. **Client Name**, a private company registered and incorporated under the Companies Act under registration number **Reg Number**, hereinafter referred to as the '**client**'.

## 2. DEFINITIONS AND INTERPRETATION

2.1. The headings to the clauses and schedules of this agreement are for the purposes of convenience and reference only and shall not be used in the interpretation, modification or amplification of the terms of this agreement or any of its clauses.

2.2. In this agreement, unless the context indicates otherwise, the words and expressions set forth shall bear the following meanings:-

2.2.1. "**Agreement**" means this document together with any annexure or addendum, signed by the parties.

2.2.2. "**Business Day**" means any day other than a Saturday, Sunday or an official public holiday in terms of the Public Holidays Act, 1994, or as gazetted by the government of the Republic of South Africa.

2.2.3. "**Client**" means **Client Name**

2.2.4. "**Effective Date**" means the date of signature of this agreement.

2.2.5. "**Go-Live Date**" means the date upon which the service provider issue a Go-Live Certificate and upon that date the period commence for the services being rendered for the period stipulated in this agreement.

2.2.6. "**Go-Live Certificate**" means the certificate the service provider issue to the client once the system goes live and upon such time that the service provider will render invoices for payment to the client for services rendered in terms of this agreement.

2.2.7. "**Service provider**" means LanDynamix CC.

2.2.8. "**Listed services**" means those services listed in the schedule of services annexed to this agreement and which forms part of the agreement between the parties.

- 2.3. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the agreement.
- 2.4. The *eiusdem generis* and *contra preferentem* rules shall not apply.
- 2.5. Unless inconsistent with the context, an expression which denotes:-
- 2.5.1. any one gender includes the other genders;
  - 2.5.2. a natural person includes a juristic person and *vice versa*; and
  - 2.5.3. the singular includes the plural and *vice versa*.
- 2.6. When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 2.7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.8. The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they shall operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

### 3. **RECORDAL**

- 3.1. It is recorded that:-
- 3.1.1. The service provider has the requisite skills, expertise and experience in the provision of information technology requirements of the client.
  - 3.1.2. The client hereby appoints the service provider with effect from the Effective Date to provide information technology services to the client upon the terms and conditions of this agreement.
  - 3.1.3. The service provider hereby accepts such appointment upon the terms and conditions of this agreement.

#### 4. **DURATION**

- 4.1. This agreement shall be binding on the parties from the Effective Date unless otherwise terminated in accordance with the terms of this agreement.
- 4.2. This agreement shall endure for the duration of the period of the services so listed in the schedule of services which forms part of this agreement. The duration period for each of the services listed will commence once the service provider issue a Go Live Certificate for that listed service.
- 4.3. The term of this agreement and the duration of the listed services may be extended or varied at any time prior to the termination of this agreement subject to the written agreement between the parties.

#### 5. **SERVICES**

- 5.1. The services to be provided by the service provider to the client are set out in **Schedule 001** to this agreement.
- 5.2. The terms and duration of the listed services may vary from service to service and this agreement shall be binding on the parties until such time that all services listed, as the case may be, duration has lapsed and in the event that same has not been extended in writing and agreed upon by both parties.
- 5.3. The services and scope of work may be extended or varied at any time prior to the termination of this agreement subject to written agreement between the parties.

#### 6. **ADDITIONAL SERVICES**

- 6.1. The client may, at any time prior to the termination of this agreement, request the service provider to render additional services at an additional cost to be determined by the service provider.
- 6.2. The additional services and costs thereof will be added to **Schedule 001** to this agreement.
- 6.3. In the event that the additional services are to be rendered beyond the term of this agreement, this agreement shall be deemed to have been extended for the period required for the additional services. The extension will only apply in respect of the additional services.

#### 7. **FEES**

- 7.1. The fees and payments that the client will pay to the service provider in respect of the services rendered hereunder as from the Go Live Date are set out in **Schedule 001** to this agreement. The fees are exclusive of VAT. The fees do not include call-out, delivery and

installation charges, but includes travel expenses for local support services in the Johannesburg area.

- 7.2. The client shall be responsible for out of town costs such as air travel, accommodation and car hire and these will be charged to the client separately.
- 7.3. Upon receipt of a valid invoice, the client shall pay the fees when such fees become payable and shall not be entitled to withhold payment where services have been rendered. The client undertakes to make payment of the invoiced amount before the seventh day of the month following the month on which the invoice was sent to the client.
- 7.4. All fees which become due in terms of this agreement shall be payable by the client to the service provider at its bankers nominated in writing from time to time. Payment shall not be deemed to have been effected until the funds have been cleared by to and received by the service provider's bankers.
- 7.5. Any amount not paid by the client to the service provider on due date shall bear interest at the prime lending rate charged by First National Bank of South Africa to its most favoured private individual clients on unsecured overdraft basis from time to time, as certified by any branch manager of that bank whose authority it shall not be necessary to prove, calculated from due date to date of actual payment.
- 7.6. Any failure by the client to pay the service provider shall entitle the service provider, *inter alia*, to suspend the provision of all services until such time as all arrears have been paid in full, including, without limitation, any interest due, provided that the withholding of such payment is not as a result of breach on the part of the service provider.
- 7.7. It is recorded that the fees will be increased annually on the anniversary date of the effective date of this agreement in line with the prevailing inflation rate. Written notice of such increase will be served on the client two (2) months prior to the implementation of the increase. The parties agree that only fee increases above 10% will be subject to negotiation.
- 7.8. Call-out, delivery and installation charges will be levied separately as and when the services are required by the client.
- 7.9. The service provider will furnish the client with payment terms within 10 (ten) days of the conclusion of this agreement.

## **8. SERVICE HOURS, CALL-OUT AND CALL LODGING AND MEETING PROCEDURES**

- 8.1. The service provider will furnish the client a document regarding service hours, call-out, call-lodging and meeting procedures within 10 (ten) days of the conclusion of this agreement.

## **9. ACQUISITION OF NEW EQUIPMENT AND SOFTWARE**

- 9.1. The client may order new equipment and software from suppliers through the service provider. The service provider will advise the client about the different suppliers of the equipment and software, but it will be the prerogative of the client to choose a particular supplier.
- 9.2. The client shall inspect the equipment and software prior to payment and delivery. The service provider shall be entitled to test such equipment and software, and to customise it to the specific requirements of the client where requested by the client to do so.
- 9.2. Orders will only be placed with the suppliers by the service provider once the client approves the quotation from the service provider and the service provider receives an official request to order from the client by e-mail or facsimile.
- 9.3. The equipment and software shall be installed by the service provider at the client's premises.

## **10. INTELLECTUAL PROPERTY**

- 10.1. Neither party shall be entitled nor have the right to use any intellectual property belonging to the other party in any manner whatsoever unless specifically authorised in this agreement or in writing by the owner of such intellectual property and then only to the extent so authorised.
- 10.2. All intellectual property owned by a party and all modifications made by that party to the intellectual property owned by it shall at all times remain the sole property of that party and neither party shall acquire any rights, title or interest of any kind in any intellectual property owned by the other party.

## **11. NON-SOLICITATION OF THE SERVICE PROVIDER'S STAFF**

- 11.1. The Client agrees not to solicit staff members of the Service Provider, whether directly or indirectly at any time during the staff members' employment with the Service Provider.
- 11.2. The client furthermore acknowledges that the undertaking referred to in 11.1 above, shall:-
  - 11.2.1 be deemed to be a material term of this agreement, the breach of which term shall entitle the Service Provider to forthwith cancel this agreement and claim any damages it may have suffered as a result of the aforesaid breach;
  - 11.2.2 be separate and divisible from all the other undertakings contained in this agreement;
  - 11.2.3 not affect any of the other undertakings contained in the rest of this agreement, to the extent that the undertaking in 11.1 above is or becomes unenforceable;

11.2.4 be deemed to be reasonable and necessary to protect the lawful interest of the Service Provider.

**12. TERMINATION**

- 12.1. Either party shall be entitled to terminate this agreement by giving the other party three (3) months written notice once the initial contract period has elapsed.
- 12.2. In the event that this agreement is terminated under this clause, the service provider shall be entitled to pro rata payment for services rendered up to the date of termination. Details of such services must be provided to the client and upon such time be paid immediately by the client.

**13. BREACH**

- 13.1. In the event that one party breaches any provision or term of this agreement, the other party shall sent a written notice requiring the party in breach to rectify such breach within five (5) days of the date of the notice. If the party in breach fails to rectify the breach within the aforesaid period, the other party shall be entitled to cancel this agreement or claim specific performance and/or damages, in addition to any other remedy available to it in law or in terms of this agreement.

**14. FORCE MAJEURE**

- 14.1. Interrupting circumstances for the purposes of this agreement shall include, but not limited to *vis major* or *force majeure* or *casus fortuitous*, and circumstances that are not reasonably foreseeable.
- 14.2. If interrupting circumstances cause delays in or failure or partial failure of performance by a party of all or any of its obligations, this agreement, or as the case may be, any portion thereof, shall be suspended for the period during which the interrupting circumstances prevail, but if they affect any material part of the agreement, it shall be suspended only for a maximum period of ninety (90) days after which any affected party shall be entitled on thirty (30) days' written notice to cancel this agreement.
- 14.3. Written notice of the interrupting circumstances specifying their nature and date of commencement shall be dispatched by the party seeking to rely on them as soon as reasonably possible after their commencement.
- 14.4. Written notice of the cessation of interrupting circumstances shall be given by the party who relied on them, within five (5) days after such cessation.

**15. LIMITATION OF LIABILITY**

- 15.1. This clause applies to claims between the parties.
- 15.2. Notwithstanding any other provisions contained in this agreement, neither party nor its employees, directors, officers, agents, subcontractors, and suppliers shall be liable to the other party or its employees, directors, officers, agents, subcontractors and suppliers for any direct, indirect, incidental, consequential damages or loss, or for any lost profits, revenue, goodwill or savings arising out of this agreement.
- 14.3. The service provider's cumulative liability to the client arising from this agreement shall be limited to the total fees payable by the client to the service provider under this agreement.
- 15.4. The provisions of this clause shall survive the termination or expiry of this agreement.
- 15.5. Nothing in this clause shall be construed as indemnifying either party from any claims by third parties, nor shall it limiting either party's liability to third parties. There will be no limitation of liability arising from grossly negligent or intentional acts or omissions by either party which are of a delictual nature.

**16. DISPUTE RESOLUTION**

- 16.1. Prior to the initiation of formal dispute resolution procedures, the parties shall first attempt to resolve any dispute arising from this agreement informally and in good faith.
- 16.2. Upon written request of a party, any dispute that arises between the parties shall first be referred to the designated representatives. The designated representatives shall meet as often as the parties may reasonably determine is necessary to gather and furnish information to the other with respect to the matter in issue which the parties believe to be appropriate in connection with its resolution. The designated representatives shall discuss the problem and attempt to resolve dispute without the necessity of any formal proceeding. During the course of the discussion, all reasonable requests made by one party to the other for information related to this agreement shall be honoured in order that each of the parties may be fully advised of the other party's position.
- 16.3. Formal proceedings for the resolution of the dispute shall not commence until the designated representatives have concluded that informal resolution of the dispute would not be achieved or ten (10) days has elapsed since the dispute was referred to designated representatives, whichever occurs first.

- 16.4. If the informal proceedings for the resolution of the dispute fail, the dispute shall be submitted to and decided by arbitration in terms of the arbitration legislation in force in the Republic of South Africa, by an arbitrator appointed by the Arbitration Foundation of South Africa.
- 16.5. The arbitration shall be held in Johannesburg.
- 16.6. The arbitrator's decision shall be binding upon the parties.

17. **GENERAL**

- 17.1. No alteration, cancellation, variation or addition to this agreement shall be of force and effect unless reduced to writing and signed by the parties to this agreement or their duly authorized representatives.
- 17.2. No latitude, extension of time or other indulgence which may be given, granted or allowed by any party to any other party in respect of the performance of any obligation in terms of this agreement, or the enforcement of any right arising from this agreement, shall be construed as an implied or tacit consent by such party or operate as a waiver or novation of or otherwise affect any of the parties' rights in terms of or arising from this agreement or stop such party from enforcing, at any time

18. **DOMICILIUM CITANDI ET EXECUTANDI**

- 18.1. The parties choose as their domicilia citandi et executandi for all purposes in terms of this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:-

**LanDynamix**

Unit B1, the Braids Office Park

113 Bowling Avenue

Gallo Manor, Sandton

THUS SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ 2016

\_\_\_\_\_

On behalf LanDynamix

THUS SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ 2016

NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

On behalf of .....