

SECONDMENT AGREEMENT

Entered into between

MANTSOPA LOCAL MUNICIPALITY

And

CENTLEC (Pty) Ltd

And

THE SOUTH AFRICAN MUNICIPAL WORKERS UNION

And

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION

Handwritten signatures and initials:
R. S. P. M. M. C. M. M. C. M. M. C.

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1. PARTIES

The parties to this agreement are –

- 1.1. Mantsopa Local Municipality, a municipality established in terms of the provisions of section 12 of the Local Government : Municipal Structures Act 17 of 1998 under Provincial Notice No 182 of 28 September 2000 with its head office at 38 Joubert Street, Ladybrand, herein represented by the Municipal Manager or Acting Municipal Manager,
- 1.2 CENTLEC, a private company incorporated in accordance with the laws of the Republic of South Africa with registration no. 2003/011612/07, established as a municipal entity as contemplated in section 82(1) of the Local Government: Municipal Systems Act 31 of 2000 and wholly owned by the Mangaung Local Municipality, with its registered office at 30 Rhodes Avenue, Oranjesig, Bloemfontein;
- 1.3 The South African Municipal Workers Union, a registered trade union as defined in terms of section 213 of the LRA and duly registered as such in terms of section 96 of the LRA; and
- 1.4 The Independent Municipal and Allied Trade Union, a registered trade union as defined in terms of section 213 of the LRA and duly registered as such in terms of section 96 of the LRA.

2. RECORDAL

- 2.1 It is recorded that -
 - 2.1.1 At the Effective date IMATU and SAMWU are registered trade unions which have as their members a number of Seconded Employees of MLM. MLM, IMATU and SAMWU have entered into Collective Agreements between themselves and under the auspices of SALGABC which apply to those Seconded Employees who are members of the respective trade unions. The Employer and CENTLEC acknowledges the validity of the Collective Agreements referred to in this clause 2.1.1 and their application to such Seconded Employees;
 - 2.1.2 In terms of the Constitution, the Structures Act and the Systems Act the Employer is charged with the responsibility to ensure the sustainable provision of municipal services;
 - 2.1.3 The National Minister for Provincial and Local Government has, in terms of the provisions of section 84(3) of the Structures Act and by means of Government notice No 831 of 13 June 2003, authorised the Employer to perform the function of bulk supply of electricity (including embedded generation) and its distribution;

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- 2.1.4 In terms of the provisions of section 73 of the Systems Act, the Employer is obliged to give effect to the provisions of the Constitution, to ensure that all members of the local community in the municipality have access to at least the minimum level of electricity, which must be equitable and accessible, financially and environmentally sustainable and provided in a manner that is conducive to the improvement of standards of quality over time;
- 2.1.5 In anticipation of and in preparation for the restructuring of the electricity distribution industry in South Africa into 'REDs' in the near future, the Employer has established a relationship with CENTLEC, to supply, generate and distribute electricity in the municipal area on its behalf as a service provider in accordance with a service delivery agreement (hereinafter referred to as "the SDA") concluded with CENTLEC;
- 2.1.6 This agreement establishes the framework for the Secondment of Staff to CENTLEC from the Employer and ensures that the Conditions of Employment of Seconded Employees are not prejudicially affected by the Secondment;
- 2.1.7 The grading of the employees' posts (levels) as indicated in conditions of service, do not bar the change of titles by CENTLEC in line with CENTLEC's requirements.
- 2.1.8 There currently exist between the Employer/Mantsopa and CENTLEC an SDA regulating amongst others the appointment of CENTLEC by Mantsopa Municipality to supply, generate and distribute electricity and in general be responsible for sustainable electricity provision in the area contemplated in the said SDA, on behalf of Mantsopa Municipality. The provision of the SDA and annexures thereto, which shall include any amendments/ variations/novation to the SDA and/or annexures thereto and insofar as they deal with the rights and obligation of employer-employee nature and human resource in general should be read as fully incorporated herein.

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this agreement, unless inconsistent with or otherwise indicated by the context the following words and expressions shall have the meanings set out opposite them:

"Annexure" means any annexure to this agreement;

“Collective Agreement” any collective agreement as defined in section 213 of the Labour Relations Act 66 of 1995 applicable to the Municipality, including any annual wage agreement entered into by the Municipality;

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"Conditions of Employment"	any condition of employment contained in any Contract of Employment, any policy or directive of the Municipality and/or any Collective Agreement applicable to the Municipality and Seconded Employees;
"Constitution"	the Constitution of the Republic of South Africa, Act 108 of 1996;
"Contract of Employment"	an employment contract, and any amendments thereto, concluded between the Employer/Mantsopa Municipality and any Seconded Employees, irrespective of the format thereof, which determines the terms and conditions of appointment of the seconded employee;
"Effective Date"	the 1 st of July 2008, notwithstanding the date of last signature of this agreement;
"Employer/MANTSOPA"	means Mantsopa Local Municipality;
"LLF"	means Local Labour Forum of the Employer
"LRA"	the Labour Relations Act 66 of 1995;
"Parties"	Mantsopa Local Municipality, CENTLEC, SAMWU and IMATU, and any reference to " a Party " shall refer to one of the relevant Parties as required by the context;
"REDs"	Regional Electricity Distributors;
"Regulatory Requirements"	collectively all prevailing laws, regulations, ordinances, policy directives and standards which apply in South Africa and the relevant industry within which Seconded Employees will be performing their services, with specific inclusion of all local government, taxation, labour, health and safety, occupational injuries and diseases, skills development and training laws and regulations;
"SALGBC"	South African Local Government Bargaining Council;

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“SDA”	means the Service delivery agreement concluded between Mantsopa and CENTLEC;
“Seconded Employees”	means the employees of the Employer/Mantsopa listed in Annexure A attached hereto, and any such employees as may be seconded by the Employer/Mantsopa to CENTLEC from time to time whose names are not currently reflected at annexure A, and the word staff shall be accorded the same meaning;
“Secondment Agreement”	refers to this agreement;
“Secondment date”	shall be the 1 st of July 2008 irrespective of the date of signature of this agreement;
“Structures Act”	the Local Government: Municipal Structures Act 117 of 1998;
“Systems Act”	the Local Government: Municipal Systems Act 32 of 2000;
“Termination Date”	means the date upon which this secondment agreement shall terminate;
“the CEO”	means the Chief Executive Officer of CENCLEC;
“the Municipal Manager”	Means the Municipal Manager or Acting Municipal Manager or Mantsopa Local Municipality;
“the Unions”	means IMATU and SAMWU, or either of them if the context is appropriate.

3.2.1 This agreement shall be interpreted according to the following provisions, unless inconsistent with or otherwise indicated by the context –

- i. the headings of clauses, sub-clauses and Annexures have been inserted for convenience only and shall not affect the interpretation of this agreement;
- ii. any reference to any agreement or Annexure, shall be construed as including a reference to any agreement or annexure amending, varying, novating or substituting that agreement or Annexure, provided all approvals required to be given pursuant to this

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agreement for any amendment, variation, novation or substitution of such agreement or Annexure has been obtained;

- iii. references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this agreement;
- iv. any reference to one gender shall include the other gender;
- v. words in the singular number shall include the plural and *vice versa*;
- vi. references to a "**person**" shall include where the context so requires, an individual, firm, company, corporation, juristic person, local authority, and any trust, organisation, association or partnership, whether or not having separate legal personality;
- vii. words defined in a specific clause have the same meaning in all other clauses of this agreement;
- viii. if any definition in this clause 3 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this agreement; and
- ix. the Parties acknowledge that each of them have had the opportunity to take legal advice concerning this agreement, and agree that no provision or word used in this agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this agreement or any part of it.

4. AUTHORITY

- 4.1 Both Unions are duly authorised representatives of the Seconded employees, and are duly mandated to negotiate and sign this agreement on behalf of the Seconded employees.
- 4.2 The Municipal Manager of the Employer/Mantsopa and the CEO of CENTLEC are duly authorised to sign this Secondment agreement on behalf of the Employer/Mantsopa and CENTLEC respectively.

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5. TERMS AND CONDITIONS OF THE SECONDMENT

- 5.1 The Employer/Mantsopa shall at all times remain the employer of the Seconded Employees and be required to comply with all Regulatory Requirements and Conditions of Employment applicable to its employer-employee relationship with the Seconded Employees. However any such compliance is specifically assigned to CENTLEC in terms of this agreement or any other legislation.
- 5.2 CENTLEC shall be entitled to obtain the services of the Seconded Employees in terms of this agreement, which services shall be similar in scope to that contained their Contracts of Employment. Without prejudice to the foregoing, CENTLEC shall be entitled to supervise and manage the Seconded Employees, including the issuing of orders and instructions to the Seconded Employees in the performance of its operations, provided that any such orders or instructions are reasonable and relate to the position to which the Seconded Employees have been Seconded to and does not infringe on the Conditions of Employment of the Seconded Employees.
- 5.3 Seconded employees shall continue to enjoy their rights as employees of Mantsopa, and shall be obliged to continue to perform their duties and obligations as required by CENTLEC at the Secondment date. Nothing in this agreement prevents CENTLEC from restructuring seconded duties, functioning and responsibilities of the Seconded Employees subject to consultation with the Employer and representative Unions.
- 5.4 CENTLEC shall not require Seconded Employees to do or refrain from doing anything which is or may cause any real or perceived conflict of interest with the interests of the Employer/Mantsopa
- 5.5 CENTLEC shall have the authority to take disciplinary action against and /or process grievances of Seconded employees in terms of any existing conditions of employment of such employees. For all purposes parties agree that the word Municipal Manager as currently reflect in the disciplinary code and procedure shall be substituted by the word "CEO" in respect of seconded Employees.
- 5.6 If a Seconded employee is found guilty by CENTLEC of an offence that justifies dismissal, CENTLEC shall make such necessary recommendation to Mantsopa for confirmation of the sanction to be imposed, which confirmation shall not be unreasonably withheld.

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 14 (date)
 @ (initials)
 M.M.C (initials)
 S. (initials)

- SSS
8 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

6. NEW SECONDED EMPLOYEES

If the Employer/MLM employs any person after the Secondment date, with the intention of seconding them to CENTLEC, the Unions, the Employer and CENTLEC shall ensure that such an employee is aware of the secondment agreement; the provisions of the SDA and any amendment or novation thereto; any other employment policy, collective agreements or regulatory prescripts applicable at workplace.

7. TERMINATION OF SECONDMENT

- 7.1 Secondment to CENTLEC shall automatically terminate on transfer of the business to RED's unless otherwise agreed by parties. This does not bar termination for any reasons recognized in law as sufficient or recognized by the Employer as sufficient reason for termination.
- 7.2 If the Employer dismisses a seconded employee, for any reason recognized in law as sufficient, the secondment of such employee to CENTLEC shall terminate and so too shall his/her employment relationship with the Employer come to an end.

8. GOOD FAITH AND SUPPORT

- 8.1 The Parties undertake to act in good faith towards each other and not to do anything which may be prejudicial to the other for the duration of this agreement.
- 8.2 The Parties shall co-operate and consult with each other regarding the activities of the Parties in terms of this agreement and the promotion of the objects thereof, and shall provide all reasonable support and assistance to each other to enable the Parties to exercise their rights and comply with their obligations in terms of this agreement.
- 8.3 The Parties undertake to do all things and sign all documents necessary or requisite to give effect to the terms, conditions and provisions of this agreement according to its intent and purpose, and must refrain from doing anything which might hinder performance of this agreement.
- 8.4 To the extent that legislation may render certain of the terms of this agreement nugatory, parties agree to renegotiate such terms in good faith, having due regard to such legislative amendments or repeals.

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9. DISPUTE RESOLUTION

- 9.1 The Dispute Resolution Procedure set out in this clause 9 (the "**Dispute Resolution Procedure**") shall apply to any dispute about the interpretation or application of this Agreement.
- 9.2 A dispute will not be deemed to be a dispute until any one of the Parties has provided a written notice conveying the nature and scope of the dispute to the Party or Parties which it is in dispute with.
- 9.3 Any party may, following the written notice referred to in clause 9.2 refer a dispute to the LLF for resolution and providing the party/parties to this agreement with reasonable notice of such a referral.
- 9.4 The LLF shall within a reasonable time convene a meeting and invite all relevant parties to such a meeting with the purpose of resolving the dispute.
- 9.5 Parties shall endeavour to resolve the dispute between them as speedily as possible at the meeting convened by the LLF in terms of clause 9.4 for this purpose.
- 9.6 In the event of the deadlock, the referring party may using the prescribed SALGBC forms and outlining the impasse therein, refer the dispute to the Regional SALGBC for conciliation.
- 9.7 The Regional Secretary of the SALGBC may investigate the dispute and issue a directive, and in the event that the dispute is not resolved, the Regional Secretary may:
- 9.7.1 appoint a conciliator from its panel of conciliators to resolve the dispute by conciliation, and if the dispute remains unresolved;
- 9.7.2 refer the dispute to arbitration, provided that the request for arbitration shall have been made by the referring party, and in this latter case the Regional Secretary of the SALGBC shall appoint the arbitrator from its panel of arbitrators to arbitrate the dispute.
- 9.8 The Arbitrator appointed in terms of clause 9.7.2 shall firstly endeavour to resolve the dispute by way of conciliation and if the dispute remains unresolved, resolve the dispute through arbitration.
- 9.9 The arbitration proceedings shall be held informally and in a summary manner, and all procedural requirements and formalities shall be determined by the arbitrator. In determining such formalities and procedure, the arbitrator need not observe the normal strict rules of evidence or usual formalities of procedure.

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9.10 The arbitrator appointed in terms of this clause shall deal with the dispute in terms of the LRA and may make any appropriate order within the confines of the LRA for similar types of disputes in respect of interpretation or application of the collective agreements and his decision shall be final and binding.

10. ENTIRE AGREEMENT

This agreement contains all the terms and conditions of the agreement between the Parties concerning the subject matter hereof and no terms, conditions, warranties or representations whatever apart from those contained in this agreement have been made or agreed to by the Parties.

11. NON-VARIATION

No variation or consensual termination of this agreement or any part thereof shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

12. DOMICILIUM

The Parties choose their *domicilium citandi et executandi* for all purposes under this agreement at the addresses referred to in clause 13 or as notified hereinunder.

13. NOTICES

13.1 All notices given by a Party to another Party in terms of this Agreement shall be given in writing by pre-paid registered post or telefax, or delivered by hand to –

13.1.1 THE EMPLOYER/MANTSOPA

Physical: 38 Joubert Street.

Ladybrand

9745

Postal: Private Bag X11 or PO Box 64

Ladybrand

9745

Telefax: 051 9240020

Attention: The Municipal Manager

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Sas
L.P.O. Runc

13.1.2

CENTLEC (Pty) Ltd

Physical: 30 Rhodes Avenue

Orangesig

Bloemfontein

Postal: Private Bag X14

Brandhof

9324

Telefax 051 409 2366

Attention: The CEO

13.1.3

THE SOUTH AFRICAN MUNICIPAL WORKERS UNION

Physical:

.....

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Postal:

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.....

Telefax:

Attention: Local Chairperson

13.1.4

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION

Physical:

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Postal:

.....

.....

Telefax:

Attention: Branch Manager

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or such other address as the a Party may inform the other Parties in writing, which address shall not be a *poste restante*, shall be an address in the Republic of South Africa and shall be deemed to have taken effect 14 (FOURTEEN) days after posting of the required written notice.

13.2 A notice –

13.2.1 given by registered post, will be deemed to have been received 7 (SEVEN) days after the date of posting thereof;

13.2.2 sent by telefax, shall be deemed to have been received on the first business day following the date of transmission of such notice; or

13.2.3 delivered by hand shall be deemed to have been received on the date of delivery thereof.

13.2.4 delivered by an electronic data message, shall be regarded as having been received by the addressee when the complete data message enters an information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee, and such data message must be regarded as having been sent from the originator's usual place of business or residence and as having been received at the addressee's usual place of business or residence.

13.3 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the Parties from another, including by way of facsimile and electronic transmission, shall be adequate written notice or communication to such Party.

14. **INDULGENCE**

No relaxation or indulgence which any party (the "**first party**") may grant to the other party (the "**second party**") in regard to any of the second party's obligations in terms hereof shall constitute a waiver of or prejudice any of the first party's rights in terms hereof.

15. **SEVERABILITY**

Each clause of this agreement is severable the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court or arbitrator/conciliator, the remaining clauses shall be of full force and effect.

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 C. 19

16. NO IMPEDIMENT

By entering into this agreement, the Parties warrant that there are no impediments or restrictions to their doing so and that this agreement does not violate the provisions of any agreement between any of the Parties and any third party.

17. COUNTERPARTS

This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

18. COMMENCEMENT

Notwithstanding the date of signature hereof, this agreement shall commence on the Effective Date and terminate as set out in clause 7 hereinbefore.

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

DATE

PLACE

WITNESSES

SIGNATURE

12 June 2008 LADY BRAND

1. [Signature]

[Signature]
for: THE EMPLOYER

2. [Signature]

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10/8 08/10/08 @ munc
P. 10/8 08/10/08 @ munc

ANNEXURE A
List of seconded personnel

L M Mrogo

T E Motsoane

S G Bothman

V I Mphomela


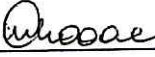
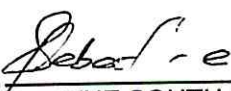
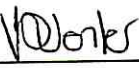


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ANNEXURE A
List of seconded personnel

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Council Resolution 726/27/11/2007
File no. 1121000 07

<u>DATE</u>	<u>PLACE</u>	<u>WITNESSES</u>	<u>SIGNATURE</u>
<u>30/05/08</u>	<u>BLOEMFONTEIN</u>	1. <u></u>	<u></u>
		2. _____	for: CENTLEC (Pty) Ltd
<u>20/06/08</u>	<u>Ladybrand</u>	1. <u></u>	<u></u>
		2. <u></u>	for: THE SOUTH AFRICAN MUNICIPAL WORKERS UNION
<u>20/6/08</u>	<u>Ladybrand</u>	1. <u></u>	<u></u>
		2. <u></u>	for: INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION

