

Service Delivery Agreement

entered into and between



Mantsopa Local Municipality

("Mantsopa")

and

Centlec (Pty) Ltd

("Centlec")

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1. PARTIES

The Parties to this Agreement are -

- 1.1. **MANTSOPA LOCAL MUNICIPALITY**, a local municipality established in terms of the provisions of section 12 of the Municipal Structures Act, under Provincial Notice No 182 of 28 September 2000, with its head office at Ladybrand, herein represented by the Municipal Manager ("Mantsopa");
- 1.2. **CENTLEC (PTY) LTD**, a private company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 2003/011612/07, established as a municipal entity as contemplated in section 86 (c)(1)(a) of the Municipal Systems Act, and wholly owned by the Mangaung Local Municipality with its registered office at Rhodes Street, Oranjesig, Bloemfontein, herein represented by the Chief Executive Officer; ("Centlec"); and

who warrant that they are duly authorised thereto.

2. RECORDAL

- 2.1. the Constitution and Municipal Structures Act respectively impose obligations on Mantsopa to ensure the sustainable provision of municipal services in the Contract Area, amongst which is included the supply of electricity;
- 2.2. the Municipal Systems Act imposes an obligation on Mantsopa to give effect to the provisions of the Constitution pursuant to which, amongst others, all members of the local community in the Contract Area should have at least access to a minimum level of electricity, in a manner which is equitable and accessible, financially and environmentally sustainable and provided in a manner that is conducive to the improvement of standards of quality over time;
- 2.3. Mantsopa is the owner of the Network and is authorised in terms of Government Notice no 1260 of 28 November 2000 to provide electricity within its municipal area of jurisdiction, which municipal area of jurisdiction also incorporates the Contract Area;
- 2.4. Mantsopa is currently unable to comply with the obligations imposed on it by the Constitution, the Municipal Structures Act, the Municipal Systems Act and is furthermore in general unable to perform the function of Electricity Distribution in the Contract Area;
- 2.5. the Parties agree as set out herein.

3. DEFINITIONS AND INTERPRETATION

- 3.1. **Definitions**

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In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

"Centlec"	the Party referred to in clause 1.2 (<i>Parties</i>);
"Commencement Date"	the date of last signature of this Agreement;
"Contract Area"	the municipal area of Mantsopa, as demarcated in terms of the provisions of the Municipal Demarcation Act and indicated on Map 9 contained in the Free State Provincial Notice No 14 dated 28 February 2000;
"Contract Manager"	the respective representatives of the Parties as appointed and nominated from time to time with responsibility for the liaison and contract management function in respect of this Agreement;
"Distribution License"	the distribution license issued by NERSA to Centlec authorising Centlec to distribute electricity;
"Electricity Regulation Act"	the Electricity Regulation Act 4 of 2006, as amended;
"Electricity Distribution"	the distribution of electricity in the Contract Area in accordance with the Service Specifications;
"Maintenance of the Network"	the systematic inspection, the carrying out of minor adjustments, testing, calibrating, measuring and recording, replacing of minor parts and the performing or implementing of any other similar measures executed in accordance with the Service Specifications to prevent the deterioration of the Network and to ensure reliability of the Network (all of the aforesaid as may be possible taking into consideration the physical condition and constraints of the Network on the Commencement Date, without engaging in major maintenance activities);
"Municipal Demarcation Act"	the Local Government: Municipal Demarcation Act 27 of 1998, as amended;

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"Municipal Finance Management Act"	the Local Government: Municipal Finance Management Act 56 of 2003, as amended;
"Municipal Structures Act"	the Local Government: Municipal Structures Act 117 of 1998, as amended;
"Municipal Systems Act"	the Local Government: Municipal Systems Act 32 of 2000, as amended;
"Mantsopa"	when referred to as- <ul style="list-style-type: none"> (a) an entity, means a municipality as referred to in section 2 of the Systems Act and for purposes of this Agreement, refers to the Party contemplated in clause 1.1 (<i>Parties</i>); (b) a geographic area, means the Contract Area;
"NERSA"	the National Energy Regulator of South Africa established in terms of section 3 of the National Energy Regulator Act 40 of 2004;
"Network"	the total electricity distribution network in use in the Contract Area on the Commencement Date for purposes of distributing electricity to consumers in the Contract Area together with the property, plant and facilities used in the Contract Area on the Commencement Date to generate and distribute electricity;
"Failure"	any failure by the Contractor to perform the Services in accordance with the clause 11.2 (<i>Service Standards</i>);
"Good Industry Practice"	applying, in relation to the manner in which the Services are rendered, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;







"OHASA"	Occupational Health and Safety Act 85 of 1993;
"Parties"	Mantsopa and Centlec, and any reference to "a Party " shall refer to one of the relevant Parties as required by the context;
"Services"	the specific services to be performed and provided by Centlec to or on behalf of Mantsopa in terms of this Agreement, namely Electricity Distribution, construction and Maintenance of the Network in the Contract Area as contemplated and specified in this Agreement;
"the/this Agreement"	this service level agreement between the Parties in respect of Electricity Distribution and Maintenance of the Network, together with the Annexures thereto.

3.2. Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 3.2.1. 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.
- 3.2.2. References to "**Parties**" shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 3.2.3. References to a "**person**" shall include an individual, firm, company, corporation, juristic person, and any trust, organisation, association or partnership, whether or not having separate legal personality.
- 3.2.4. References to "**clauses**", "**sub-clauses**" and "**Annexures**" are references to the clauses, sub-clauses and annexures of this Agreement.
- 3.2.5. References to any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time.

- 3.2.6. Words in parentheses and italics appearing after a clause reference or a reference to a Schedule are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 3.2.7. The headings of clauses, sub-clauses and Annexures are included for convenience only and shall not affect the interpretation of this Agreement.
- 3.2.8. The Annexures to this Agreement are an integral part of this Agreement and references to this Agreement shall include the Annexures.
- 3.2.9. The Parties acknowledge that each of them has 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.
- 3.2.10. Words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 3.2.11. References to "**this Agreement**" shall include this Agreement as amended, varied, novated or substituted in writing from time to time.
- 3.2.12. The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day.
- 3.2.13. If any definition (*Definitions*) 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.

4. APPOINTMENT

Mantsopa hereby appoints Centlec, which accepts such appointment to perform the Services within the Contract Area, subject to the terms and conditions hereof, against such consideration as determined in clause 14 (*Consideration for Services*).

5. CO-OPERATION

Mantsopa and Centlec shall consult on a monthly basis or at such time as may be necessary with regard to any assistance or advice which Centlec may require in connection with the fulfilling of any of its obligations in terms of this Agreement. Mantsopa shall further timeously provide Centlec with such information as it may reasonably require enabling it to comply with any of its obligations in terms of this Agreement.

6. STATUS OF THE PARTIES

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It is recorded that, notwithstanding any provision to the contrary or any provision that could be construed to the contrary, the status of Centlec shall be that of an independent contractor and Centlec shall under no circumstances and for no purposes whatsoever be regarded as a partner of or standing within a joint venture relationship with Mantsopa, and no employees of Centlec shall be deemed or regarded as an employee of Mantsopa. The Parties hereby record that they are contracting on an independent basis and that neither Party shall under any circumstances and for no reason whatsoever have the right in any way to bind or represent the other Party, or purport to have such authority.

7. DURATION

This Agreement shall become effective on the Commencement Date and shall endure indefinitely until terminated on written notice of at least 6 (six) months by either Party.

8. OWNERSHIP OF THE NETWORK

Centlec has, and will have, no title, ownership, lien, leasehold rights or any right of limited ownership in respect of the Network or any part thereof. Title to the Network, including all improvements thereto from time to time, shall at all times vest and remain vested in Mantsopa.

9. ACCESS TO THE NETWORK AND MANTSOPA PROPERTY

9.1. Mantsopa hereby cedes, assigns and transfers to Centlec the right of use of the Network, including the right to exercise any right of way and/or use (whether existing at the Commencement Date or only coming into existence thereafter) encompassed in any servitude and similar rights of Mantsopa in respect of or relating to the Network and the supply of Services in the Contract Area as may be necessary for Centlec to fully and effectively perform the Services and to in general give full effect to this Agreement.

9.2. Mantsopa undertakes to grant all consents, approvals and permissions, and shall furthermore render all necessary assistance, attest all necessary documents and complete and/or perform all such formalities as may be reasonably required by Centlec to perform the Services in terms hereof and give effect to this Agreement.

10. GENERAL RIGHTS AND OBLIGATIONS OF CENTLEC

10.1. Centlec shall-

10.1.1. annually, in consultation with Mantsopa, prepare the annual operational and capital budget in respect of the maintenance, refurbishment and construction of the Network and shall submit the same to Mantsopa for approval as contemplated in clause 12.1.10 (*Obligations of Mantsopa*). In the interim, the Parties agree that until such time as Centlec

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is in the position to take over the electricity financial function of Mantsopa, Mantsopa shall on a monthly basis pay to Centlec the applicable budgeted operational expenditure; and

- 10.1.2. apply and adhere to Mantsopa's policy in respect of the termination of electricity supply to any consumer thereof on the non-payment of electricity accounts by such consumers in the Contract Area;
- 10.2. Centlec has the right to do anything reasonably necessary for, or incidental to, the effective performance of the Services in terms of this Agreement.
- 10.3. This Agreement is not exclusive and does not impact on Centlec's entitlement to perform services similar to the Services to other local and other authorities (or other non-governmental institutions, as the case may be) in respect of areas outside the Contract Area.
- 10.4. Centlec shall in the provision of the Services, avoid undue hindrance, interruption or interference with the operations of Mantsopa or otherwise hinder the activities of Mantsopa and its employees, save to the extent entitled to do so in terms of this Agreement or as may be reasonably necessary for the performance of the Services under this Agreement.
- 10.5. Centlec shall not be relieved of any obligation, responsibility or liability under this Agreement by the appointment of any subcontractor to carry out any part of the Services. As between Centlec and Mantsopa, Centlec shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all subcontractors. All references in this Agreement to any performance, payment, act, default, omission, breach or negligence of the Centlec shall be deemed to include any of the same by a subcontractor.
- 10.6. Mantsopa shall at all reasonable times and with prior written notice have access to (including the right to reproduce) all records and documentation required by Centlec to be kept in relation to the Services for purposes of auditing, quality control and monitoring of the Services by Mantsopa.

11. SERVICES

11.1. Provision of the Services

Centlec shall provide the Services in accordance with this Agreement for the duration of the Agreement and shall be entitled to payment for the Services in accordance with clause 14 (*Consideration for Services*).

11.2. Service Standards

Centlec shall carry out the Services (each as a separate and distinct obligation) –

- 11.2.1. in accordance with Good Industry Practice;

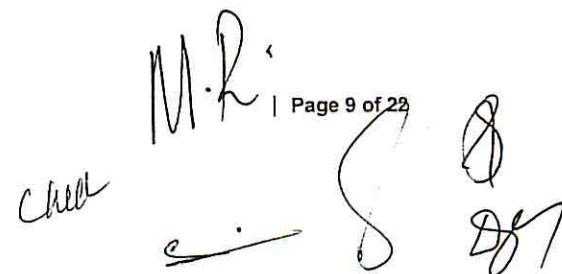
- 11.2.2. utilizing non-hazardous goods, stocks, consumables, materials and equipment that are of a satisfactory quality according to Good Industry Practice;
- 11.2.3. in a manner which gives priority to health and safety in the performance of the Services in order to protect life, health, property and the environment;
- 11.2.4. in compliance with OHASA;
- 11.2.5. in compliance with the reasonable policies, procedures, protocols and directives of Mantsopa (as may be amended from time to time) as indicated;
- 11.2.6. so that all persons employed in connection with the performance of the Services have the necessary skills and experience as required by their respective professions, trades and callings and taking into account their roles and responsibilities in relation to the Services;
- 11.2.7. so that all aspects of the Services are supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Services having regard to the activities which are carried on;
- 11.2.8. in accordance with the provisions of this Agreement,
- 11.2.9. in all respects in full compliance with the conditions of the Distribution Licence and/or any other licence under which it operates , whether in substitution of or in conjunction with the Distribution Licence;
- 11.2.10. in accordance with and in compliance with all applicable legislation and regulations issued from time to time by any relevant and competent authority having relevance and/or application to the rendering of the Services;
- 11.2.11. not actively doing anything which causes Mantsopa failing to comply with its constitutional and statutory obligations with regard to Electricity Distribution and Maintenance of the Network;
- 11.2.12. not doing anything that is inconsistent with or contrary to the lawful requirements of NERSA;

and shall upon receipt of a request by Mantsopa within 10 (TEN) days supply to Mantsopa evidence substantiating its compliance with this clause 11.2 (*Services Standards*).

12. GENERAL OBLIGATIONS OF MANTSOPA

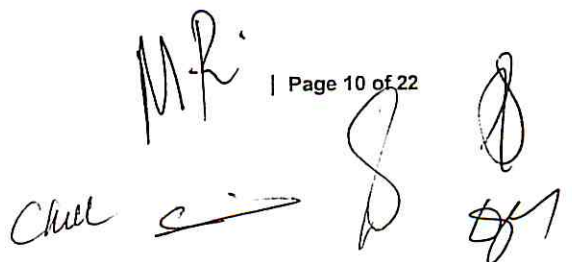
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- 12.1.1. shall fully comply with all its obligations as provided in Municipal Structures Act, Municipal Systems Act, Municipal Finance Management Act, Electricity Regulation Act and any other applicable legislation and regulations issued under such legislation;
- 12.1.2. shall not do anything (or allow anything to be done to the extent the same is within its power) which may be prejudicial to the Distribution Licence or the Centlec's ability to perform the Services and/or comply with any licence condition of the Distribution License. In this regard, as soon as possible after the Commencement Date, Mantsopa shall procure the signing of all documents, procure the passing of the necessary resolutions and do all such things as may be necessary to ensure that all its licenses relevant to this Agreement, including but not limited to, distribution licence issued by NERSA, are accordingly transferred to Centlec;
- 12.1.3. shall give reasonable assistance to Centlec (including without limitation in the manner contemplated in clause 9 (*Access to the Network and Mantsopa property*) and by giving appropriate advice, if possible) to perform the Services as contemplated in this Agreement with effect from the Commencement Date;
- 12.1.4. shall at the option of Centlec procure the transfer or termination of all existing contracts, other than electricity supply contracts, in respect of the Network;
- 12.1.5. shall consult with Centlec to ensure a smooth integration and synchronisation process of activities of Centlec and Mantsopa respectively to the extent necessary to enable Centlec to optimally utilise the Network and perform the Services;
- 12.1.6. without prejudice to its statutory functions and legal obligations, shall not wilfully impede Centlec in the performance of its obligations under this Agreement;
- 12.1.7. shall not unreasonably withhold any of the consents which Centlec is required to obtain from it;
- 12.1.8. shall remain responsible to ensure that electricity is provided to the community within the Contract Area in accordance with the provisions of the Systems Act and must in this regard comply with the provisions of section 80 of the Systems Act;
- 12.1.9. shall in general exercise its powers and functions in such a manner as to ensure uninterrupted supply of electricity in the best interest of the local community in the Contract Area;
- 12.1.10. shall annually consult with Centlec with regard to the preparation of the annual operational and capital budget in respect of the maintenance, refurbishment and construction of the Network by Centlec and after thorough consideration thereof, and the absence of manifest error, approve the same;

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- 12.1.11. shall inform Centlec as soon as reasonably practical if at any time it becomes unable to meet any of its obligations hereunder, and in such event inform, and keep Centlec informed, of any course of action which is required and/or recommended by any relevant authority or statutory body to remedy the situation or default of Mantsopa;
- 12.1.12. shall continue to administer bulk purchase account until such time as a new arrangement is entered into between Centlec and Eskom; and
- 12.1.13. pay the costs of electricity supplied for its own consumption.

13. PERFORMANCE MONITORING

13.1. Contractor monitoring

- 13.1.1. Centlec shall be responsible to monitor its performance in the delivery of the Services, and shall implement appropriate monitoring, quality control and management procedures in accordance with Good Industry Practice in respect of the Services, including such monitoring procedures as the Parties may from time-to-time agree.
- 13.1.2. Centlec shall conduct regular physical inspections and audits (including spot audits) of its operational activities to determine the quality and standard of performance of the Services.
- 13.1.3. Centlec shall regularly review and assess its management and mitigation of Failures so as to implement improvements in the provision of the Services and the reduction of Failures.
- 13.1.4. On the notification of any failure or complaint regarding the quality of Services, Centlec shall attend to such notification with the speed and urgency appropriate to the nature of the failure or complaint.
- 13.1.5. Centlec shall prepare and deliver to Mantsopa in respect of the previous month a performance report in respect of its performance in the provision of the Services against clause 11.2 (*Service Standards*), including all failures and such other information as Mantsopa may reasonably require from time to time.

13.2. Mantsopa monitoring

Mantsopa may, carry out such monitoring and/or audit of the quality of the Services as it may from time to time require, which monitoring may include the conducting of audits, spot checks, quality assessments, third party monitoring and independent reviewing and auditing of Centlec's provision of the Services as well as periodic performance meetings with Centlec to discuss, review and assess performance and identify trends, problem areas and remedying actions to be undertaken by Centlec.

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14. CONSIDERATION FOR SERVICES

The Services shall be performed by Centlec at the fee to be determined annually by Centlec, and which fee is to be included in Mantsopa's operational budget, as contemplated in clause 12 (*General obligations of Mantsopa*).

15. TARIFF AND POLICY CONSIDERATION

- 15.1. Centlec shall determine the tariffs and tariff policy for the supply of electricity to customers within the Contract Area from time to time, subject to the provisions of this clause 15 (*Tariff and policy consideration*).
- 15.2. Centlec shall only be permitted to charge such electricity tariffs for purposes of Electricity Distribution as may be approved by Mantsopa and NERSA from time to time.
- 15.3. Centlec shall only be entitled to submit such tariff proposals to NERSA as have been approved by Mantsopa. All tariffs will be prepared in accordance with the requirements and guidelines of NERSA from time to time. Mantsopa and Centlec acknowledge that Centlec shall only be entitled to impose such tariffs as are finally approved by NERSA.

16. CONSUMER ACCOUNTS

- 16.1. All existing consumer contracts and accounts, shall be transferred by Mantsopa to Centlec at any such date as Centlec may in writing indicate its readiness to take over this service.
- 16.2. The transfer to Centlec of deposits held by Mantsopa in respect of existing accounts and contracts shall be negotiated and agreed to between the Parties.

17. CONFIDENTIALITY

- 17.1. The Parties acknowledge that they may, in the course of the carrying out of this Agreement, have gained access to and become acquainted with the business, techniques, methods and processes, trade secrets, data, information technology, software, business associates, and other private, sensitive and confidential information, or any information which is or should reasonable be regarded as from a confidential nature, or which is indicated in writing by one of the Parties to another Party to be of a confidential nature ("**Confidential Information**").
- 17.2. The Parties accordingly undertake, for the duration of this Agreement as well as after the termination thereof, not to directly or indirectly, utilize, disclose or make public to any third party any Confidential Information of the other Parties and to keep any Confidential Information secret and confidential at all times, unless such disclosure takes place in the ordinary course of the carrying out by a Party of its obligations in terms of this Agreement.

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17.3. The Confidential Information shall not include-

- 17.3.1. information which was known to a Party prior to its receipt from any other Party;
- 17.3.2. information which is or lawfully becomes generally available to the public;
- 17.3.3. information which is lawfully acquired from third parties who have a right to disclose such information;
- 17.3.4. information which by mutual agreement is released from confidential status; and
- 17.3.5. information which is required to be disclosed in response to a valid order of court or other governmental agency or if disclosure is otherwise required by law, and a Party will provide the other Party with prompt written notice if such disclosure is required, and shall limit the disclosure to the minimum necessary to comply with the law.

18. INSURANCE

- 18.1. For the full duration of this Agreement, until termination thereof for any reason, Mantsopa shall, to the reasonable satisfaction of Centlec, maintain such insurance policies in respect of the Network and/ or any improvements thereof, on such terms and conditions and with such insurers, as prescribed by Centlec, which said insurance policies shall cover such risk as may be determined by Centlec from time to time and which shall be communicated to Mantsopa in writing.
- 18.2. To the extent that Mantsopa is unable to insure and maintain insurance of the Network and/ or any improvements thereof, Centlec shall be entitled, but not be obliged, to accordingly insure such Network at the cost of Mantsopa. Mantsopa shall allow Centlec to utilise the proceeds payable from such insurance policies to repair the Network and/or any improvements thereof.
- 18.3. Any dispute between the Parties relating to whether the terms and conditions of the insurance prescribed by Centlec are reasonable, or any dispute relating to whether any specific risk or liability is adequately insured , or any dispute relating to the replacement value of any insured asset, or whether the value thereof is consistent with industry standards, shall be decided by an independent insurance expert to be agreed upon by the Parties and in the absence of agreement within 7 (SEVEN) business days from the date any of the Parties have declared the dispute in writing to the other Party, such independent expert shall be nominated by the President for the time-being of the Insurance Institute of South Africa , who must choose such expert from a leading South African firm of insurance brokers with at least 10 (TEN) years experience in the field of applicable insurance, to decide on the matter. Should any of the

Parties be dissatisfied with the decision contemplated in this clause 18.3, such decision may be referred for resolution in terms of the dispute resolution procedure contemplated in clause 26 (*Dispute Resolution*). The costs of such expert shall be borne by the parties in the proportions as determined by such expert.

18.4. Mantsopa-

- 18.4.1. shall ensure that all insurance policies referred to in clause 18.1 are duly exercised, valid and enforceable, and shall ensure and hereby warrants that such policies shall at all times be enforceable;
- 18.4.2. warrants that all premiums of the insurance policies referred to in clause 18.1 are and will at all times be fully paid;
- 18.4.3. shall utilise the proceeds resulting from any claim instituted against the relevant insurance company in terms of the relevant insurance policy, to settle any claim covered by such policy;
- 18.4.4. shall if it is unable to obtain the insurance required in terms of clause 18.1, or if such insurance is cancelled by the insurance company and Mantsopa is unable to obtain alternative insurance, immediately notify Centlec thereof, or any material changes in the terms and conditions, or level of such insurance cover, in accordance with the terms and conditions and cover as contemplated in this clause 18;
- 18.4.5. shall not do anything which may jeopardise the enforceability of the insurance policies contemplated in clause 18.1 and Mantsopa hereby warrants and undertakes at all times to comply and adhere to all terms and conditions of the relevant insurance policies and indemnifies Centlec against any breach of any such terms, including any breach by a third party;
- 18.5. Centlec shall have the right to pay any premiums and in general to do all necessary to ensure that the insurance policies contemplated in clause 18.1 are at all times enforceable, in respect of which Centlec shall have the right to recoup any such costs or expenses from Mantsopa who shall pay the same immediately upon request by Centlec.

19. LEGISLATIVE AND REGULATORY CHANGES

It is recorded that regulations may be issued by the relevant ministries, governing various aspects impacting on the Services, the provisions of municipal services by municipalities or regulating standard service delivery agreements. To the extent that anything contained in this Agreement is inconsistent with such regulations or any other applicable legislation, the provisions of this Agreement shall be deemed, in so far as possible, to be amended accordingly, provided that the remainder of the provisions of this Agreement shall remain valid and effective. To the extent that

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the legislative or regulating amendments render the preceding provisions of this clause 19 ineffective, the Parties agree to renegotiate the provisions of this Agreement in good faith, having due regard to such amendments and to the principles contained therein.

20. TERMINATION

20.1. Non-default termination

- 20.1.1. This Agreement shall automatically be terminated on the coming into effect of Regional Electricity Distributor 2 (RED 2) and provided either of the Parties or both Parties have signed new service delivery agreements with RED 2, unless it has been terminated earlier in accordance with the provisions of this Agreement.
- 20.1.2. Without prejudice to the provisions of clause 20.2 below, either Party shall be entitled to voluntarily terminate this Agreement at any time on 6 (six) months written notice to the other indicating such termination.

20.2. Breach

Should any Party (the "guilty party") commit a breach of this Agreement and fail or refuse to rectify that breach within 14 (FOURTEEN) days after receipt of a written notice from the other Party (the "innocent party"), calling upon the guilty party to rectify that breach, the innocent party shall be entitled, without prejudice to any other of his rights, to forthwith cancel this Agreement by written notice to the guilty party.

21. WARRANTIES

21.1. Centlec warranties

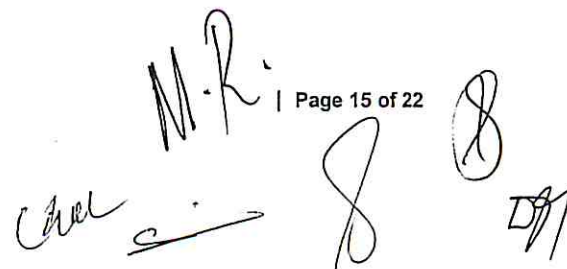
Centlec warrants that -

- 21.1.1. the obligations of Centlec under this Agreement are legal, valid and binding and enforceable against it in accordance with the terms of the Agreement;
- 21.1.2. is has satisfied itself as to the nature and extent of the Services to be provided in terms of the Agreement; and
- 21.1.3. it has the necessary resources, skills, expertise and experience required to carry out the Services in terms of this Agreement and will use reasonable care and skill in the execution of the same under this Agreement.

21.2. Mantsopa warranties

Mantsopa warrants that -

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- 21.2.1. it has taken all necessary actions to authorise the execution of this Agreement; and
- 21.2.2. it has not knowingly omitted to disclose any material information in its possession or under its control relating to the Services or Contract Area.

22. INDEMNITIES

- 22.1. Subject to the provisions of clause 22.3, Centlec hereby indemnifies Mantsopa against any loss, claim, demand, proceedings, damage and expense of whatever nature in respect of injury to or death of any person and or loss or damage to any property of any person resulting from or caused by the performance of the Services by Centlec in terms of this Agreement.
- 22.2. Mantsopa hereby indemnifies Centlec against any loss, claim, demand, proceedings, damage and expense of whatever nature in respect of injury to or death of any person and or loss or damage to any property of any person pertaining to any existing supply contracts and other contracts in respect of the Network entered into by Mantsopa or relating to the design, location, construction, state and ownership of the Network.
- 22.3. Mantsopa hereby indemnifies Centlec against any loss, claim, demand, proceedings, damage and expense of whatever nature in respect of injury to or death of any person and/or loss of or damage to any property of any person pertaining to or resulting from any inability by the Centlec to perform the Services with respect to the Maintenance of the Network due to the unavailability of funds in the operational budget for the Maintenance of the Network and the Services associated therewith.

23. RISK

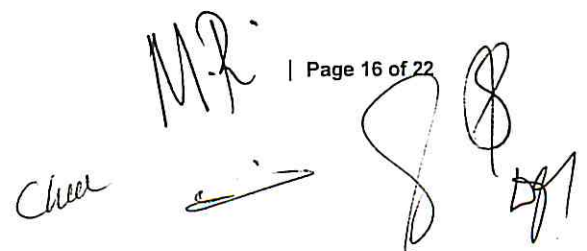
- 23.1. Risk with regard to the Network or any portion thereof, shall notwithstanding the use and operation thereof by Centlec, be borne by Mantsopa for the duration of this Agreement.
- 23.2. Should the Network and/ or any improvements thereof be destroyed or damaged to an extent which prevents Centlec from performing the Services pursuant to this Agreement, Mantsopa shall be obliged to repair the Network and/or any improvements thereof and Centlec shall not be obliged to perform any Services in terms of this Agreement, until such time as the Network or any improvements thereof has to the satisfaction of Centlec been repaired to the state which allows Centlec to perform the Services.

24. LIMITATION OF LIABILITY

Notwithstanding the indemnities given in terms of clause 22 (*Indemnities*) and notwithstanding any provision to the contrary, Mantsopa shall not be entitled to claim damages for breach of this Agreement or the termination thereof, or for damages based in delict or otherwise, to the extent that any loss claimed by Mantsopa is for loss of profits, loss of use, loss of business or loss of

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business opportunity or is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by Mantsopa.

25. CONTRACT MANAGEMENT

- 25.1. Within 30 (THIRTY) days after the Commencement Date, Mantsopa and Centlec shall each appoint a Contract Manager.
- 25.2. The Contract Managers shall be authorised to manage the carrying out of this Agreement on behalf of the Parties and shall have the necessary skills, expertise and experience to act in such capacity.
- 25.3. Unless otherwise agreed between the Parties, all communication between the Parties regarding the performance of the Services shall take place between the Contract Managers.
- 25.4. The Contract Managers shall meet monthly in order to consider whether or not Centlec is complying with the Service Specifications and otherwise performing the Services in accordance with the provisions of this Agreement.
- 25.5. Any appointment, removal or replacement of a Contract Manager by a Party, shall be effected by written notice to the other Party and shall be effective as from the date of receipt (or deemed receipt) of such notice by the other Party.

26. DISPUTE RESOLUTION

- 26.1. The dispute resolution procedure contained in this clause 26 ("**Dispute Resolution Procedure**") shall apply to any dispute, claim or difference between the Parties arising out of or relating to this Agreement ("**a dispute**").
- 26.2. A dispute will not be deemed to be a dispute until one of the Parties has provided a written notice conveying the nature and scope of the dispute to the other Party.
- 26.3. All disputes shall first be referred to a mediation committee consisting of the Contract Managers of the Parties ("**Mediation Committee**") for resolution. An agreement reached by the Mediation Committee shall be reduced to writing and shall be binding on the Parties.
- 26.4. If the Parties have been unable to resolve any dispute within 10 (TEN) working days of referral to the Mediation Committee, either Party may refer the matter to arbitration.
- 26.5. The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1965 (Act No 42 of 1965, as amended from time to time), provided that –
- 26.5.1. a single arbitrator shall be appointed;

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- 26.5.2. the arbitrator shall be a practicing counsel or attorney of not less than 10 (TEN) years standing agreed upon by the parties within 10 (TEN) days after the date on which the arbitration is called for.
- 26.6. If the parties fail to reach agreement within 10 (TEN) days after arbitration has been called for on the arbitrator to be appointed, such arbitrator shall be appointed by the President for the time-being of the Law Society of the Free State.
- 26.7. The arbitration proceedings shall take place in Bloemfontein at a venue and time to be determined by the arbitrator.
- 26.8. 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 does not need to observe the normal strict rules of evidence or usual formalities of procedure.
- 26.9. The decision of the arbitrator shall be final and binding on the Parties.
- 26.10. The cost of the arbitration proceedings shall be borne by the Parties as decided by the arbitrator.
- 26.11. Notwithstanding the provisions of this clause 26, any Party shall be entitled to approach a competent court of law having jurisdiction to obtain any urgent relief which may be required by such Party.

27. VIS MAIOR

In the event of any delay in performance by either Party due to any cause arising from or attributable to acts, events, non-happenings, omissions, accidents or acts of God beyond the reasonable control of such Party (including, but not limited to, strikes, lock-outs, shortage of labour, civil commotion, riots, war, threat of or preparation for war, breaking off of diplomatic relations, fire, explosion, sabotage, storm, flood, earthquake, fog, subsidence, pestilence or epidemic, machinery breakdown, failure of plant or collapse of structure, voluntary or mandatory compliance with any direction, request or order of any person having or appearing to have authority, inability to obtain suitable raw material, equipment, components or transportation as a result of vis maior, uncontrollable and/or any other cause or contingency beyond the control of that Party), the Party affected thereby shall be under no liability for loss or injury suffered by the other Party as a result thereof and the performance of such obligation by the Party affected thereby shall be suspended during such delay and upon cessation of the cause of such delay, this Agreement shall again become fully operative and, subject to the provisions of clause 22.2 (*Indemnities*), such affected Party shall immediately rectify such delay in performance, provided that, if such delay pertains to a material obligation of the Party affected by such event of *vis maior* and such delay shall exceed 30 (THIRTY) days, the Party shall be entitled to terminate this Agreement by written notice to the other Party.

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28. MISCELLANEOUS

- 28.1. The provisions of this Agreement shall automatically inure to any legal successors of the Parties, but save as otherwise expressly permitted hereunder, a Party shall not, without the prior written approval of the other Parties, which shall not be unreasonably withheld, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to any other person.
- 28.2. Centlec shall not subcontract with any person for the carrying out of any of its obligations under this Agreement, without, in each case, the prior written consent of Mantsopa, which consent shall not be unreasonably withheld or delayed.
- 28.3. This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. Subject to the provisions of clause 27 (*Dispute Resolution*), each Party agrees that the Free State Provincial Division of the High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this Agreement, and irrevocably submits to the jurisdiction of the Free State Provincial Division of the High Court of the High Court of South Africa.
- 28.4. No provision of this Agreement (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.
- 28.5. Any relaxation, indulgence or delay (together "**Indulgence**") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).
- 28.6. Except where expressly provided to the contrary in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.
- 28.7. This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Agreement for all purposes.

28.8. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile or electronic mail to the recipient Party at its relevant address set out below:

28.8.1. if to Mantsopa, at:

Address: 38 Joubert Street, Ladybrand

Postal address: P O Box 64, Ladybrand, 9745

Facsimile number: (051) 924 0020

Electronic mail address: mantsopamun@exinet.co.za

Marked for the attention of: C L M Rampai

28.8.2. if to Centlec, at:

Address: Rhodes Street, Oranjesig, Bloemfontein

Postal address: Private Bag x 14, Brandhof, 9322

Facsimile number: (051) 409 2366

Electronic mail address: lobe@centlec.co.za

Marked for the attention of: T G Lobe

28.9. Either Party may, by written notice to the other Party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.

28.10. Any notice or other communication given by any Party to the other Party which –

28.10.1. is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting; or

28.10.2. is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or

- 28.10.3. is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report; or
- 28.10.4. is transmitted by electronic mail to the addressee at the addressee's specified electronic mail address shall be rebuttably presumed to have received by the addressee on the date of transmission as reflected on the sender's electronic mail records.
- 28.11. 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.
- 28.12. The Parties choose their respective physical addresses in clause 29.8 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.
- 28.13. Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- 28.14. 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, the remaining clauses shall be of full force and effect.
- 28.15. 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.

Thus done and signed at Ladybrand on this 11th day of July 2007.

As witnesses:

[Signature]

[Signature]

For and on behalf of
Mantsopa
by

[Signature]

who warrants his/her authority
hereto

Thus done and signed at Ladybrand on this 11th day of July 2007.

As witnesses:

[Signature]

[Signature]

For and on behalf of
Centlec
by

[Signature]

who warrants his/her authority
hereto

[Signature]