

SERVICE DELIVERY AGREEMENT

ENTERED INTO BETWEEN -

MANTSOPA LOCAL MUNICIPALITY

and

CENTLEC (SOC) LTD

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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 182 of 28 September 2000, with its head office at the 38 Joubert street, Ladybrand herein represented by the Municipal Manager ("Mantsopa");

1.2. CENTLEC (SOC) LTD, a state owned company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 2003/011612/30, 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 Telkom Building, 195 Dr Nelson Mandela Drive, Park West, Bloemfontein, herein represented by the Chief Executive Officer ("Centlec"), and who warrant that they are duly authorized 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 authorized 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 currently does not have sufficiently capacity to enable themselves to comply with the obligations imposed on them by the Constitution, the Municipal Structures Act, the Municipal Systems Act and is furthermore in general does not have sufficiently capacity to perform the function of Electricity Distribution in the Contract Area;
- 2.5. The essence of this agreement is that Centlec makes use of the assets of Mantsopa to deliver electricity to the inhabitants of Mantsopa, and will do so for its own profit or loss, subject to the conditions as set out below.
- 2.6. The Parties agree as set out herein.

3. DEFINITIONS AND INTERPRETATION

3.1. DEFINITIONS

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

Municipal Demarcation Act	the Local Government Municipal Demarcation Act 27 of 1998, as amended;
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	the Local Government: Municipal Systems

Act	Act 32 of 2000, as amended;
Mantsopa	<p>when referred to as-</p> <p>(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 (Parties);</p> <p>(b) a geographic area, means the Contract Area;</p>
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 clause 12.2 (Service Standards);
Good Industry Practice	<p>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</p> <p>would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances</p>

3.2. INTERPRETATION

- 3.2.1. This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:
- 3.2.2. 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.
- 3.2.3. References to "Parties" shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 3.2.4. References to a "person" shall include an individual, firm, company, corporation, juristic person, and any trust, organization, association or partnership, whether or not having separate legal personality.
- 3.2.5. References to "clauses", "sub-clauses" and "Annexures" are references to the clauses, sub-clauses and annexures of this Agreement.
- 3.2.6. 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.
- 3.2.7. 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.
- 3.2.8. The headings of clauses, sub-clauses and Annexures are included for convenience only and shall not affect the interpretation of this

Agreement.

- 3.2.9. The Annexures to this Agreement are an integral part of this Agreement and references to this Agreement shall include the Annexures.
- 3.2.10. 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.
- 3.2.11. 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.
- 3.2.12. References to "**this Agreement**" shall include this Agreement and annexures as amended, varied, novated or substituted in writing from time to time.
- 3.2.13. 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.
- 3.2.14. 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.
- 3.2.15. Commencement date is 1 July 2018, regardless of the date of the last signature.

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 15 (*Consideration for Services*).

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5. CO-OPERATION

Mantsopa and Centlec shall consult at least once a quarter 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

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 for 3 (three) years as of date of this agreement or until terminated on written notice of at least 3 (three) months by either Party or be extended by any period or periods with the agreement of both parties.

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

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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, as it's agent, 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) 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 prepare the annual operational and capital budget in respect of the Maintenance, refurbishment and construction of the Network as dictated by the IDP programme, which shall also include provision for the maintenance and replacement when necessary of the electricity vehicle fleet, and shall submit the same to Mantsopa for information as contemplated in clause 12.1.10 (Obligations of Mantsopa); and

10.1.2 apply and adhere to Centlec'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,

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the effective performance of the Services in terms of this Agreement and incidental hereto:

10.2.1 annually, supply Mantsopa with a fixed 3 (three) year budget and services plan for the maintenance of the infrastructure, indicating annually the cost for that specific year; (Maintenance plan)

10.2.2 annually, supply Mantsopa with a fixed 3 (three) year Medium Term Revenue and Expenditure Framework (MTREF) budget and services plan for the funding of the upgrading of the infrastructure, indicating annually the cost for that specific year; (Loans). Mantsopa will take responsibility for those outstanding loans on an annual basis.

10.2.3 prioritize the maintenance of street-lights, ensuring that all high-mast lightning and street lights are monitored and repaired in terms of the adopted Centlec policy. Report in terms of this action to be submitted monthly, setting out both the cost as well as the functioning level as indicated in **Annexure B**.

10.3 This Agreement is not exclusive and does not impact on Centlec's entitlement to perform services similar to these 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 by Centlec 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.

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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.

10.7 Centlec shall advise Mantsopa when they enter into a new contract with Eskom, and Mantsopa shall provide Centlec, within 30 (thirty) days of date of signature thereof, with a copy of the contract between Mantsopa and Eskom.

11. SERVICES

11.1 Provision of the Services

Centlec shall provide the Services within distribution area of Mantsopa in accordance with this Agreement for the duration of the Agreement and shall be entitled to payment for such Services by any consumer.

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

11.2.3 equipment that are of a satisfactory quality according to NRS Specifications;

11.2.4 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;

11.2.5 in compliance with OHASA;

11.2.6 in compliance with the reasonable policies, procedures, protocols and directives of Mantsopa (as may be amended from time to time) as indicated;

11.2.7 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;

- 11.2.8 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;
- 11.2.9 in accordance with the provisions of this Agreement;
- 11.2.10 in all respects in full compliance with the conditions of the Distribution License and/or another license under which it operates, whether in substitution of or in conjunction with the Distribution License;
- 11.2.11 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;
- 11.2.12 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;
- 11.2.13 not doing anything that is inconsistent with or contrary to the lawful requirements of NERSA; and shall upon receipt of a written request by Mantsopa, within 10 (TEN) days, supply to Mantsopa evidence substantiating its compliance with this clause 12.2 (Services Standards).

12. GENERAL OBLIGATIONS OF MANTSOPA

12.1 Mantsopa-

- 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 License or the Centlec's ability to perform the Services and/or comply with any license condition of the Distribution License;
- 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 consult with Centlec to ensure a smooth integration and synchronization process of activities of Centlec and Mantsopa respectively to the extent necessary to enable Centlec to optimally utilize the Network and perform the Services;
- 12.1.5 without prejudice to its statutory functions and legal obligations, shall not willfully impede Centlec in the performance of its obligations under this Agreement;
- 12.1.6 shall not unreasonably withhold any of the consents which Centlec is required to obtain from it;
- 12.1.7 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;
- 12.1.8 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;
- 12.1.9 shall be informed by Centlec with regard to the preparation of the annual operational and capital budget in respect of the Maintenance and refurbishment. In respect of execution of new capital projects Centlec shall be informed by the municipality as dictated by the IDP programme;

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12.1.10 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;

12.1.11 shall off-set the cost of electricity supplied for its own consumption, which includes all municipal buildings and installations inclusive of public lighting on the monthly statement; and

12.1.12 shall provide suitable office and storage accommodation for the staff supplied by Centlec in respect of this contract, at a market related rental to be agreed upon annually in advance, by not later than the 30th April, between the parties and payable by Centlec within 7 (seven) days of receipt of a written invoice from Mantsopa.

12.1.13 shall at the conclusion of the contract make a decision to either second or transfer (in terms of section 197 of the Labour Relations Act 66 of 1995) the existing electricity staff to Centlec.

13. PERFORMANCE MONITORING

13.1 Service Provider 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 every 6 (six) months, as from date of signature hereof, conduct physical inspections and audits (including spot audits) of its operational activities to determine the quality and

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standard of performance of the Services and shall submit such written reports to Mantsopa within 14 (fourteen) days of such inspections and audits;

13.1.3 Centlec shall regularly, and at least once every 30 (thirty) days, review and assess its management and mitigation of Power Failures so as to implement improvements in the provision of the Services and the reduction of Power Failures and shall submit written reports to Mantsopa within 7 (seven) days of such reviews;

13.1.4 on the notification of any Power 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 Power Failure or complaint, and when Mantsopa reasonably requires it, Centlec shall provide within 14 (fourteen) days;

13.1.5 Centlec shall inform Mantsopa on a quarterly basis, as of date of this agreement, in respect of the quarter, technical statements in respect of its performance in the provision of the Services against clause 11.2 (Service Standards), including all Power Failures and such other information as Mantsopa may reasonably require from time to time.

13.2 Mantsopa monitoring

Mantsopa or its representative 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 which at least must include:

13.2.1 a monthly assessment by Mantsopa of the service rendered would be done based on the information rendered by Centlec

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within 7 working days from the end of the month;

13.2.2 a monthly meeting as convened by Mantsopa with Centlec would be held to discuss the assessment as well as mitigating actions to be implemented to reduce risk.

14. CONSIDERATION FOR SERVICES

14.1 The Services shall be performed by Centlec on an actual cost recovery basis.

15. TARIFF AND POLICY CONSIDERATION

15.1 Subject to clause 15.2 Centlec shall determine the tariffs and tariff policy for the supply of electricity to customers within the Contract Area annually, 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 annually.

15.3 All tariffs will be prepared in accordance with the requirements of Mantsopa and guidelines of NERSA annually. 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 The transfer to Centlec of deposits held by Mantsopa in respect of existing accounts and contracts shall be negotiated and finalized on or within 3 months after the Commencement Date of this Agreement. Customer accounts to be transferred to Centlec if any

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.

17.3 The Confidential Information shall not include-

information which was known to a Party prior to its receipt from any Party;

information which is or lawfully becomes generally available to the public;

information which is lawfully acquired from third parties who have a right to disclose such information;

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 determined by Centlec and Mantsopa, which said insurance policies shall cover such risk as may be determined between Centlec and Mantsopa from time to time.

18.2 In the situation that Mantsopa cannot be able 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 utilize 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, such decision may be referred for resolution in terms of the dispute resolution procedure contemplated in clause 28 (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 utilize the proceeds resulting from any claim instituted against the relevant insurance company in terms of the

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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;

18.5 Centlec and/or Mantsopa shall not do anything which may jeopardize the enforceability of the insurance policies contemplated in clause 18.1 and Centlec and/or Mantsopa hereby warrants and undertakes at all times to comply and adhere to all terms and conditions of the relevant insurance policies and indemnifies the innocent party against any breach of any such terms, including any breach by a third party;

18.6 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 services 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 the legislative or regulating amendments render the preceding provisions of this clause 19 ineffective, the Parties agree to renegotiate the provisions of this

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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 Without prejudice to the provisions of clause 20.2 below, either Party shall be entitled to voluntarily terminate this Agreement at any time by giving one financial year written notice to the other indicating such termination.

20.1.2 At the conclusion of this agreement unless the parties agree to extend the contract.

21. WARRANTIES

Centlec warrants that-

- 21.1 the obligations of Centlec under this Agreement are legal, valid and binding and enforceable against it in accordance with the terms of this Agreement;
- 21.2 it has satisfied itself as to the nature and extent of the Services to be provided in terms of this Agreement; and
- 21.3 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.

Mantsopa warrants that-

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

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22. INDEMNITIES

- 22.1 Subject to the provisions of clause 23.3, 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, if this act or omission is caused by Mantsopa.
- 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 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, if this act or omission is caused by Mantsopa.

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, as owner of the network, for the duration of this agreement as properly advised by Centlec.
- 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 liable for the costs of the 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

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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 23 (*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 business opportunity or is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by Mantsopa, if the damages relate to an act or omission caused 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 authorized 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 quarterly 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 date of receipt (or deemed receipt) of such notice by the other Party.

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26. DISPUTE RESOLUTION

- 26.1 The dispute resolution procedure contained in this clause 27 ("Dispute Resolution Procedure") shall apply to any dispute, claim or indifference between the Parties arising out of or relating 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.
- 26.4 An agreement reached by the Mediation Committee shall be reduced to writing and shall be binding on the Parties.
- 26.5 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.
- 26.6 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-
- 26.7 a single arbitrator shall be appointed;
- 26.8 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.
- 26.9 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.
- 26.10 The arbitration proceedings shall take place in Bloemfontein at a venue and time to be determined by the arbitrator.
- 26.11 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.

- 26.12 The decision of the arbitrator shall be final and binding on the Parties.
- 26.13 The cost of the arbitration proceedings shall be borne by the Parties as decided by the arbitrator.
- 26.14 Notwithstanding the provisions of this clause 27, 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 MAJOR

In the event of any delay in performance by either Party due to any cause arising from or attributed 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 23.2 (*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 such 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 be applicable 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 or consensually cancelled, 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 authorized 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

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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:

if to Mantsopa, at:

Address: 3 Joubert Street, Ladybrand, 9745
Postal address: Private Bag X11, LADYBRAND, 9745
Facsimile number: (051) 673 1550
Electronic mail address: mantsopa@xsinet.co.za
Marked for attention of: The Municipal Manager

if to Centlec, at:

Address: 30 Rhodes Avenue, Oranjesig, Bloemfontein
Postal address: Private Bag X14, Brandhof, 9324
Facsimile number: (051) 409 2366
Electronic mail address: ceo@centlec.co.za marked for attention of
The Chief Executive Officer

28.9 Any notice or other communication given by any Party to the other Party which -

28.9.1 is sent by registered post to the addressee at its specified address

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- shall be refutably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting; or
- 28.9.2 is delivered by hand during the normal business hours of the addressee at its specified address shall be refutably presumed to have been received by the addressee at the time of delivery; or
- 28.9.3 is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be refutably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report; or
- 28.9.4 is transmitted by electronic mail to the addressee at the addressee's specified electronic mail address shall be refutably presumed to have received by the addressee on the date of transmission as reflected on the sender's electronic mail records.
- 28.9.5 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.
- 28.10 The Parties choose their respective physical addresses in clause 29.8 as their respective domicilia citandi et executandi at which all documents and all notices relating to any matter referred to this agreement or 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.
- 28.11 Each Party shall be responsible for paying its own costs and expenses

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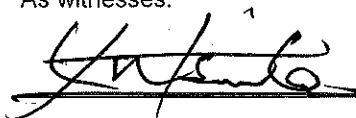
incurred in connection with the negotiation, preparation and execution of this Agreement.

28.12 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.

28.12.1 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 Blaemfontein on this 29 day of July 2019

As witnesses:



For and on behalf of
CENTLEC (SOC) LTD
by

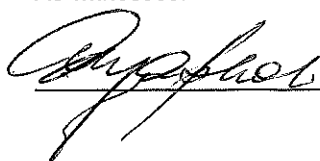
Name: A.N Mgoqi

Designation: Chief Executive Officer


who warrants his/her authority
hereto

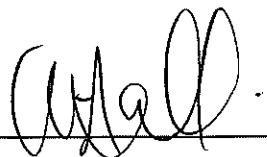
Thus done and signed at Wolfsburg on this 29th day of July 2019

As witnesses:



For and on behalf of
MANTSOPA MUNICIPALITY

by



Name: T.P. Masejane
Designation: Manager

29/07/2019
who warrants his/her authority
hereto

Annexure A: Service Delivery Details
Annexure B: Performance Reporting Schedule
Annexure C: Arrangement on Eskom bulk account

Annexure A: Service Delivery Details

In terms of the service offering from Centlec, the following was agreed:

1. Annual budget

The service provider would assist in compiling the annual operational and capital budget associated with the SDA by 31 January in terms of the criteria set by National Treasury and the municipality.

2. Midyear review & Performance

The service provider would compile and submit a midyear review budget and performance report annually by 20th January.

3. Monthly financial information

The service provider would compile and submit a section 87 report within 7 working days to the municipality with the required Trial Balance, GL and journal information. In addition to that the following reconciliations would be performed:

- Bulk Purchases
- Prepaid Sales
- Free Basic Electricity
- Sale of Electricity
- Vendor Commission
- Consumer deposits
- Consumer debtors
- VAT input and output

4. Submission of information for annual audit

The service provider would submit documentary proof within the required time frame as required by the Auditor General in executing the annual audit.

5. Year-end information

For the purpose of year-end, the following information would be availed to the

Handwritten signatures and initials:
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A.M.
M.M.
S.A.

municipality:

- a. Calculation for the provision of Bad Debts
- b. VAT input and output amounts
- c. Interest calculation on debtors
- d. Redemption calculations
- e. The status on of treatment as Payable and/or Receivable on the transactions throughout the year

6. Clearing prior year audit queries

The service provider would assist to ensure that prior year issues related to the electricity function is addressed to the satisfaction of the Auditor General to ensure a better audit outcome for the municipality. In order to achieve this, the communication protocol needs to be agreed upon (issued to the service provider or to the municipality). In addition it would add value if a representative of the municipality can attend the Audit Steering Committee.

7. Capex programme

The annual capex programme would be based on the operational requirements where more capacity is required on the networks as well as the refurbishment of the existing infrastructure. The shortfall on electrification projects would also be included in the annual capex programme.

8. Debt recovery

The vending system capabilities would be utilised to assist the municipality in debt recovery

9. Maintenance of assets

The service provider would compile an annual maintenance budget based on the operational needs, equipment manufacturer specifications and industry standards

10. Loss report

Based on the measured losses an action plan with costs would be compiled and submitted to the MM for consideration before implementation

11. Monthly report

The service provider would compile and submit monthly MFMA Section 87 reports as well as a monthly income statement to the municipality. A technical

report stating details on power failures, routine maintenance performed and capital project expenditure and progress within 7 working days from the end of the month would be submitted to the municipality. The technical report would also indicate units purchased vs units sold to determine losses. Also Supply Chain Management report where applicable to Municipalities.

12. Power Failure Restoration

The service provider staff would respond to power failures and restore them within the NRS047 time frames

13. Street & area lighting complaints

The service provider staff would respond to street and area light complaints within the agreed reaction times in terms of the adopted municipal maintenance policy.

14. IDP and SDBIP programmes: Community participation

The service provider would avail a representative to attend and participate in the IDP meetings

15. Project Execution: Sourcing of materials

The service provider would utilise its buying capacity to ensure economies of scale benefit for municipality in the sourcing of materials required for maintenance and capital projects.

16. Electrification

The municipality would avail the information of the erven to be electrified annually and the service provider would complete the application for funding from the Department of Energy. The service provider would perform the designs for the electrification projects and execute the projects on behalf of the municipality. The required monthly and close-out report for the projects would be compiled and submitted by the service provider.

17. New Connections

The service provider would process all applications for new and/or upgraded connections according to the NERSA license requirements. Upon receipt of payment for a connection, the service provider would execute the required work within the time frames specified in the NRS047 and on the required technical standard.

18. Revenue Management

Would executed active revenue management according to the adopted municipal policies to ensure bad debt is recovered and minimised

19. Annual compilation of electricity tariffs

The service provider would compile the annual electricity tariffs in line with operational needs, the revenue requirement of the municipality and NERSA guidelines. The service provider would discuss the proposed tariffs with the CFO and MM before submitting to NERSA. The service provider would interact with NERSA to address queries and submit additional information as requested by NERSA to ensure tariff approval and implementation.

20. Annual completion of D-forms

Submit the required D-forms to NERSA based on the approved Annual Financial Statements of the municipality

21. Monthly meetings

Monthly meeting would be held between the COO of the service provider and the MM or the nominate delegate to ensure the SLA performance meet both parties expectations.

22. Responsible Person

The service provider would fulfil the roll of the responsible person as required by the Occupational Health and Safety Act on behalf of the municipality.

23. Vending of prepaid electricity

The service provider would vend electricity prepaid sales through their system to the customers in the municipal area. Vendors for this purpose would be appointed with the input from the municipality and in compliance to the requirements of NRS047. Third party vendor systems would be roll-out by the service provider in the municipal area.

24. Bulk Purchases

The service provider would ensure that the electricity consumption to the municipality by Eskom is rendered at the best tariff and that the monthly account from Eskom is paid within the specified time frames.

25. Monthly Meter reading and Billing

The service provider would perform monthly meter reading and process the

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required billing to recover and collect the revenue on behalf of the municipality.

26. Other matters to be considered are:

- a. Interest on the amounts payable to The service provider in terms of the year-end (clear – is it with finance)
- b. Submission on monthly Caseware financials for municipality for next financial year

Annexure B: Performance Reporting Schedule

Annexure B: Performance Reporting Schedule

	July	August	September	Quarter 1	October	November	December	Quarter 2	January	February	March	Quarter 3	April	May	June	Quarter 4
1 No of power failures reported																
2 No of power failures restored within 1.5 hrs																
3 No of power failures restored within 4 hrs																
4 No of power failures restored within 8 hrs																
5 No of power failures restored within 12 hrs																
6 Streetlight failures reported																
7 Streetlight failures repaired																
8 High mast failures reported																
9 High mast lights repaired																
10 Number of kWh units sold																
11 Number of kWh units bought from Eskom																
12 Number of kWh units lost																
13 Cost of losses																
14 Capital expenditure																
15 Refurbishment expenditure																
16 Maintenance expenditure																
17 New connection applications received																
18 Applications processed																
19 Applications executed																
20 Financial report received																
21 Support documents issued (TB, GL)																
22 Total arrears																
23 Total billed																
24 Total collected																
25 Fines issued																
26 Fines paid																
27 Number of disconnections done																
28 Payments received due to disconnections																
29 AG issues reported																
30 AG issues resolved																

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**ANNEXURE C TO THE
SERVICE DELIVERY AGREEMENT**

ENTERED INTO BETWEEN -

MANTSOPA LOCAL MUNICIPALITY

and

CENTLEC (SOC) LTD

T.P. Am A.N
S.P. mm

ANNEXURE TO THE SERVICE AGREEMENT

1. PARTIES

The parties to this agreement ("this Annexure") 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 182 of 28 September 2000, with its head office at the 38 Joubert street, Ladybrand * herein represented by the Municipal Manager ("Mantsopa");

1.2. CENTLEC (SOC) LTD, a state owned company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 2003/011612/30, 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 Telkom Building, 30 Rhodes Avenue, Oranjesig, Bloemfontein, herein represented by the Chief Executive Officer ("Centlec"), and who warrant that they are duly authorized thereto.

2. RECORDAL

It is recorded that -

- 2.1 the Parties concluded a Service Agreement (the "Principal Agreement") which became effective on 01 July 2017 in terms of which the Service Provider would provide the services agreed upon therein and on the terms and conditions as set out in the Principal Agreement;
- 2.2 this Annexure should be read with the Principal Agreement, but insofar as this Annexure amends or contradicts the Principal Agreement, preference should be given to this Annexure;
- 2.3 unless the context indicates otherwise, or unless otherwise defined in this Annexure, words and definitions in the Principal Agreement shall have the same meaning in this Annexure; and

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2.4 the Parties agree as set out herein.

3. INTERPRETATION

The terms and conditions of the Principal Agreement, save as amended by this Annexure, shall remain to apply *mutatis mutandis*.

4. AMENDMENT MANTSOPA SERVICE DELIVERY AGREEMENT

1. The agreement tabled to Council for approval makes provision under clause 10.7 for Centlec to enter into a new supply agreement with Eskom on behalf and for Mantsopa.
2. Due to the arrears on the Mantsopa Eskom Bulk supply account and in spite of various engagements between Mantsopa, Eskom and Centlec, Eskom has refused to separate the bulk account in terms of arrears and the current account.
3. Centlec cannot take-over the arrears on the Eskom Bulk account and therefore the account will remain with Mantsopa.
4. In order to address the aspect of input and output Value Added Tax associated with the bulk account, Centlec would monthly after system closure indicate to Mantsopa the total amount of electricity sales which value would be used to create an invoice for Centlec to pay the sales to Mantsopa for the direct payment of the current Eskom bulk account before the 15th of the ensuing month.
5. In lieu of the staff utilized to perform electricity functions in Mantsopa, Mantsopa would create a monthly invoice based on the actual costs only which Centlec would re-imburse against the provision of staff on the Operational Budget compiled for and approved by Council.
6. The existing staff in the electricity department would be seconded to Centlec to execute their mandate. For that purpose the staff would report to the Centlec Manager in Centlec's Botshabelo depot or his delegated representative.

Thus done and signed at BLOEMFONTEIN on this 29 day of July 2019

As witnesses:

MANTSOPA LOCAL MUNICIPALITY AND CENTLEC (SOC) LTD

Page 3 of 4

T.P. AM
S.A. A.N. m/m

[Signature]

For and on behalf of
CENTLEC (SOC) LTD
by

Name: A.N Mgoqi

Designation: Chief Executive Officer

[Signature]
who warrants his/her authority
hereto

Thus done and signed at Ladysmith on this 29 day of July 2019

As witnesses:

[Signature]

[Signature]

For and on behalf of

by

Name: Thame P. Maseja

Designation: Municipal Manager

[Signature] 29/07/2019
who warrants his/her authority
hereto