REPUBLIC OF SOUTH AFRICA

**THE COMPANIES’ COMPANIES ACT NO. 71 OF 2008**

**MEMORANDUM OF INCORPORATION**

**OF**

**CENTLEC (RF) SOC LTD**

(a state owned company incorporated in accordance with the company laws of the Republic under registration number 2003/011612/07, of South Africa and established as a municipal entity as contemplated in Chapter 10 of the Local Government: Municipal Finance Management Act 56 of 2003 and (Chapter 8A) section 86(B) 1(a) of the Local Government: Municipal Systems Act 32 of 2000)

This Memorandum of Incorporation was adopted by Council resolution passed on **[●]** in substitution for the existing Memorandum of Incorporation of the Company

**TABLE OF CONTENTS**

|  |  |  |
| --- | --- | --- |
| **NO.** | **DESCRIPTION** | **PAGE NO.** |

[1. DEFINITIONS AND INTERPRETATION 3](#_Toc52781896)

[2. CONFLICTS WITH THE MEMORANDUM OF INCORPORATION 7](#_Toc52781897)

[3. AMENDMENT OF THE MEMORANDUM OF INCORPORATION 7](#_Toc52781898)

[4. RULES 8](#_Toc52781899)

[5. STATUS OF THE COMPANY 8](#_Toc52781900)

[6. PURPOSE AND OBJECTS 9](#_Toc52781901)

[7. LIMITATION OF LIABILITIES 9](#_Toc52781902)

[8. POWERS AND CAPACITY OF THE COMPANY 9](#_Toc52781903)

[9. GENERAL RING-FENCING PROVISIONS 9](#_Toc52781904)

[10. CAPITALISATION AND SECURITIES 14](#_Toc52781905)

[11. THE SHAREHOLDER 17](#_Toc52781906)

[12. DIRECTORS AND OFFICERS 18](#_Toc52781907)

[13. THE BOARD COMMITTEES 29](#_Toc52781908)

[14. COMPULSORY PROVISIONS 30](#_Toc52781909)

1. DEFINITIONS AND INTERPRETATION
   1. In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, or unless inconsistent with the context in which they appear, the following words and expressions shall bear the following meanings assigned to them and cognate expressions shall bear corresponding meanings:
      1. “**Area**” means the jurisdictional area of the Shareholder;
      2. “**Auditor General**” means the Auditor General of South Africa, a chapter 9 institution established in terms of the Constitution;
      3. **“Board”** means the Board of Directors of the Company appointed in terms of the Companies Act read with this Memorandum of Incorporation;
      4. “**Board Committees**” means any board committee of the Board created by the Board;
      5. “**Business**” means the business conducted by the Company being the purchase, distribution and sale of electricity and the construction and maintenance of electrical networks in the Area;
      6. “**Business Plan**” means an annual multi-year business plan of the Company containing details of how the Company will conduct the Business which shall be in accordance with section 87 of the MFMA;
      7. **“Business Day”** means any day (excluding a Saturday, Sunday or public holiday) on which banks are open for normal banking business in South Africa, and "**Business Days**" shall be construed accordingly;
      8. **“Chairperson”** means the Chairperson of the Board appointed from time to time;
      9. “**Chief Executive Officer or Managing Director**” means the Chief Executive Officer of the municipal entity appointed in terms of section 93J of the MSA;
      10. **“Company” or “Centlec”** means Centlec (RF) SOC Ltd, a state-owned company duly incorporated in accordance with the laws of South Africa under registration number 2003/011612/30;
      11. **“Companies Act”** means the Companies’ Act, 71 of 2008, as amended from time to time;
      12. “**Company Secretary**” means the company secretary of the Company appointed in terms of section 86 of the Companies Act;
      13. “**Constitution”** means the Constitution of the Republic of South Africa Act, 108 of 1996, as amended from time to time;
      14. **“Council”** means the Municipal Council of the Shareholder as defined in section 1 of the Structures Act;
      15. **“Directors”** mean the Directors of the Company appointed in terms of clause 12.1;
      16. **“Effective Date”** means the date of the filing of this MOI with the Companies Intellectual Property Commission;
      17. **“External Auditor”** means the Auditor-General as defined in section 1 of the MFMA;
      18. “**Executive Mayor**” means the executive mayor of the Mangaung Metropolitan Municipality, as elected in accordance with section 55 of the Structures Act;
      19. **“HR Committee”** means Remuneration or Human Resource Committee;
      20. “**IDP**” means the Shareholder’s integrated development plan adopted by the Council;
      21. **“KPI”** means the quarterly performance measures established by the Shareholder which is in line with the priorities, objectives, indicators and targets contained in its IDP, against which the performance of the Company shall be evaluated;
      22. **“MFMA”** means the Local Government: Municipal Finance Management Act No. 56 of 2003 and its Regulations, as amended from time to time;
      23. **“MOI”** means the Memorandum of Incorporation of the Company, as contained in this document;
      24. “**Mangaung Metropolitan Municipality**” means a statutory body established in terms of the provisions of section 12 of the Structures Act as per the establishment notice published in the Free State Provincial Gazette No. 147 of 28 March 2011;
      25. **“Municipal Representative”** means an official of the Shareholder designated as a representative of the Council in terms of section 93D of the MSA;
      26. **“MSA”** means the Local Government: Municipal Systems Act 32 of 2000, as amended;
      27. **“Person”** means any natural person, company or body corporate, a statutory body, a partnership or an association of persons, as the case may be;
      28. **“Prescribed Officer”** means any person or an official within the Company who exercises or regularly participates to a material degree in the exercise of general executive control over, and management of the whole or a significant portion of the Business;
      29. "**Regulatory Provisions**" means collectively, the provisions of any legislation or any regulation, a notice issued pursuant to such legislation, or a policy directive or notice issued by any government official, any or all of which are directly related to the regulation of Municipalities and Municipal Entities (both as defined in section 1 of the MSA), which shall include:
          1. the MFMA;
          2. the Systems Act;
          3. the Structures Act; and
          4. the Constitution;
      30. **“Service Delivery Agreement”** means the written service delivery agreement to be concluded by the Parties in terms of which the Company renders the Services pursuant to section 76(b) of the MSA;
      31. “**Services**” means the services rendered by the Company, being the provision of sustainable electricity in the Area, and anything related thereto;
      32. **“SDBIP”** means the Service Delivery and Budget Implementation Plan of the Mangaung Metropolitan Municipality as formulated from time to time;
      33. **“Securities”** means any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
      34. “**Shareholder**” means Mangaung Metropolitan Municipalitya statutory body established in terms of the provisions of section 12 of the Local Government Municipal Structures Act of 1998 as per the establishment notice published in the Free State Provincial Gazette No. 147 of 28 March 2011, or its successor-in-title from time to time, being the sole shareholder and parent municipality of the Company;
      35. “**Shareholders’ Compact**” means the Company’s shareholder compact to be approved by Council;
      36. “**Shares**” means the ordinary shares in the share capital of the Company;
      37. **“South Africa**” means the Republic of South Africa; and
      38. “**Structures Act**” means the Municipal structures Act No. 117 of 1998;
   2. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person, then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;
   3. the use of the word "**including**", "**includes**" and "**include**", followed by a specific example(s), shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example(s);
   4. where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this MOI;
   5. any capitalised word or expression used in this MOI that is defined in the Act and that is not otherwise defined in this MOI shall have the meaning assigned to it in the Act. For the avoidance of doubt, it is recorded that any reference to "Present at such Meeting" or "Present at the Meeting" shall be construed in accordance with the definition of "Present at a Meeting" in the Act;
   6. a reference to a "**section**" refers to the corresponding section of the Act; and
   7. references in the left‑hand margins to sections of the Act designated by the letter "S" and the numbers of the sections referred to are for information purposes only. Headings do not govern or affect the interpretation of this MOI.
2. CONFLICTS WITH THE MEMORANDUM OF INCORPORATION

In accordance with the Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI, and

* 1. an alterable or elective provision of the Companies Act, the provision of this MOI shall prevail to the extent of the conflict, provided that such alterable or elective provision of the Act expressly allows for the Company to adopt the conflicting provision; or
  2. an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict.
  3. In instances where this MOI complies with the Companies Act but conflicts with the provisions of the MFMA, Structures Act, or the MSA, the provisions of the MFMA, MSA and/or the Structures Act shall prevail.

1. AMENDMENT OF THE MEMORANDUM OF INCORPORATION
   1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation ejusdem generis, spelling, punctuation, reference, grammar or similar defects) in this MOI, which the Board is empowered to do, all other amendments or alterations of the MOI shall be effected in accordance with section 16 of the Companies Act, save for section 16(1)(b).
   2. Save as specifically provided for in 3.1 above, this MOI cannot be amended without the prior written approval of the Shareholder.
   3. The Company must publish a notice of any alteration made to this MOI in accordance with the provisions of section 17(1) of the Companies Act by delivering a copy of such alteration to Shareholder.
2. RULES
   1. The authority of the Board to make rules for the Company, as contemplated in section 15 (3) to 15 (5) of the Companies Act is restricted to the extent that it requires approval of the Shareholder.
   2. The Board must publish any rules made in terms of section 15(3) to 15(5) of the Companies Act by delivering a copy of those rules to the Shareholder.
   3. The Company must publish any notice of the Rules, made in terms of section 17(1) of the Companies Act, by delivering a copy of those rules to the Shareholder.
3. STATUS OF THE COMPANY
   1. The Company is a “ring fenced” company as defined in the Companies Act and a State-Owned Company as contemplated in section 8(2)(a) of the Companies Act.
   2. The Company is an entity member of the Mangaung Metropolitan Municipality Group.
   3. This MOI replaces and supersedes the Memorandum of Incorporation of the Company applicable prior to the filing hereof.
   4. The provisions of section 13(1) (a) (i) of the Companies Act shall not apply to the Company.
   5. The Company is incorporated in accordance with and governed by:
      1. the alterable provisions of the Companies Act that are applicable to State Owned Companies, subject to the limitations, extensions, variations or substitutions set out in this MOI;
      2. the unalterable provisions of the Companies Act that are applicable to State Owned Companies, save to the extent that this MOI does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement; and
      3. the provisions of this MOI.
4. PURPOSE AND OBJECTS

The main purpose and object of the Company is to undertake the Business.

1. LIMITATION OF LIABILITIES

No Person shall, subject to the provisions of section 77 of the Companies Act, solely by reason of being a Director of the Company, be liable for any liabilities or obligations of the Company.

1. POWERS AND CAPACITY OF THE COMPANY
   1. The legal powers and capacity of the Company are restricted, limited and qualified by clause 9;
   2. Subject to the provisions of clause 9 and any Regulatory Provision, the Company has all of the legal powers and capacity contemplated in the Companies Act, and no provision contained in this MOI should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
2. GENERAL RING-FENCING PROVISIONS
   1. The Company shall not conduct any other business other than the Business approved by Council.
   2. The Company shall not, and no Director, other officer, body or organ of the Company shall be authorised on behalf of the Company to, enter into any transaction:
      1. that contravenes or conflicts with this MOI;
      2. that contravenes or conflicts with the obligations of the Company under any agreement, document, deed or instrument to which it is or may become a party in accordance with this MOI;
      3. to the extent to which the capacity or powers of the Company have been qualified; or
      4. unless all applicable restrictive conditions which are imposed under this MOI are complied with in full.
   3. Except as permitted in fulfilment of the Services, neither the Company nor a Director, officer, body or organ of the Company shall be authorised on behalf of the Company to:
      1. engage or participate in any activities other than the Business (and any activities directly related thereto) which it is required to undertake under, or which are otherwise contemplated by, the Shareholder Compact and the Service Delivery Agreement;
      2. register any transfer, or issue any Shares;
      3. discharge or release any Person from its obligations to the Company if that Person has not performed its obligations in full;
      4. enter into any reconstruction, amalgamation, merger or consolidation, or be acquired by another Person;
      5. save as required for purposes of the Business and with the prior written approval of the Shareholder, raise, incur or permit to be outstanding any indebtedness (other than any statutory costs and expenses, auditing fees and directly related costs and expenses) including but not limited to any indebtedness for borrowed money or cede, pledge, mortgage, hypothecate, assign, charge, encumber or provide any other security or priority of interest, whether real or personal, registered or unregistered, of any nature whatsoever or any option, right of refusal or similar interest over any of its assets to any third party whatsoever, where prior written approval has been granted by the Shareholder, the Company may only borrow money in accordance with section 108 of the MFMA;
      6. save as required for purposes of the Business and with the prior written approval of the Shareholder, grant any guarantee, suretyship, bond, letter of credit, indemnity or similar assurance against financial loss, or incur or assume any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any Person or to make an investment in or loan to any Person, or to purchase assets of any Person, where, in each case, that obligation is assumed in order to maintain or assist the ability of that Person to meet any of its indebtedness;
      7. save as required for purposes of the Business and with the prior written approval of the Shareholder, transfer, sell, lend, part with or otherwise dispose of, or deal with, or grant any option or present or future right to acquire, the whole or any of its assets or undertakings, or any interest, estate, right, title or benefit therein; or
      8. save as required or permitted by the Shareholder or in terms of the shareholder approved dividend policy, pay any dividend (whether in cash or in specie) or make any other distribution (whether by payment or otherwise, and whether in cash or in specie) to its Shareholder or issue any further Shares or repurchase any Shares.
   4. The Company shall:
      1. conduct the Business under the name of Mangaung Metropolitan Municipality and in its own name;
      2. always hold itself out as an entity which is separate from any other entity or group of entities and shall without delay correct any misunderstanding known to the Company regarding its separate identity;
      3. maintain books and records separate from those of any other Person, maintain bank accounts separate from those of any other Person and shall not commingle its assets with the assets of any other Person;
      4. comply with all Regulatory Provisions; and
      5. not at any time act or omit to act in any manner which results or would be reasonably likely to result in the Company failing to comply timeously and in full with all its obligations under the Service Delivery Agreement.
   5. **Special Conditions** 
      1. The Company must operate within the powers and functions assigned to it by the Shareholder in terms of the Shareholder Compact and the Service Delivery Agreement.
      2. The Company shall not offer any of its Shares or Securities to the public and therefore the transferability of the Company’s Securities is strictly restricted.
      3. As set out in section 93K of the MSA, the Company may not establish or participate in the establishment of another company or any other corporate body, including a trust.
      4. The Company is prohibited from having a share or other interest in a company or any other corporate body, a trust, including any business, profession or occupation which is carried on by the Directors.
      5. The Company shall not without the approval of the Shareholder:
         1. enter into any transaction other than in the ordinary and normal course of the Business;
         2. undertake organisational restructuring or redesign;
         3. enter into any transaction action which would result in expenditure exceeding the scope of the Business Plan or the approved medium-term expenditure budget of the Company;
         4. enter into compromise with its creditors in terms of section 155 of the Companies Act;
         5. propose any scheme of arrangement in terms of section 114 of the Companies Act;
         6. amalgamate or merge with any other entity or company;
         7. permit any of its assets to become subject to any form of security or lien or hypothecation;
         8. alienate or dispose any of its assets; and
         9. become liable, whether as surety, co-principal debtor, guarantor or indemnifier for the liabilities of any third party.
      6. The Company must not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any Person who is a Director, or an employee of the Company, except as:
         1. approved by the Shareholder from time to time;
         2. reasonable remuneration for goods delivered or services rendered to or at the direction of the Company; or
         3. payment of, or reimbursement for, expenses incurred to advance a stated object of the Company; or
         4. payment of or reimbursement incurred in the performance of their duties, including all travelling, hotel and other expenses in attendance of the meetings or incurred to advance a stated object of the Company;
         5. payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another; or
         6. payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
         7. in respect of any legal obligation binding on the Company; or
         8. in respect of the legal expenses in relation to any matter concerning the Company.
      7. Subject to the approval of the Shareholder, the Company is restricted to invest its funds:
         1. with a financial institution as defined in section 1 of the Financial Institutions Protection of Funds Act No. 28 of 2001; or
         2. in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act No. 1 of 1985.
   6. **Remuneration of Directors** 
      1. The Shareholder must determine the upper limits of the remuneration of the Board, salary, allowances and other benefits of the Chief Executive Officer and senior managers of the Company.
      2. Remuneration of the Company’s Directors shall be approved by the Shareholder and subject to section 89 of MFMA and no financial assistance shall be offered/granted to the Directors, other than the approved remuneration and/or expenses for their service as Directors of the Company.
      3. Save for the disclosure obligations set out in section 89 (b) of the MFMA, the authority of the Company to pay remuneration to its Directors is not limited by this MOI.
      4. A remuneration committee shall be established by the Board which shall subject to the provisions of this clause 9.6.4 have authority to recommend the remuneration of the Directors and other members of senior management to the Shareholder for approval.
   7. **Dissolution of the Company**

Upon dissolution of the Company or its winding-up after paying its debts, the net assets of the Company shall be distributed or transferred back to the Shareholder or to any municipal entity owned by the Shareholder as determined by the Shareholder before its dissolution.

1. CAPITALISATION AND SECURITIES
   1. **Share Capital and Variation of Rights** 
      1. The Company is authorised to issue 1000 (one thousand) ordinary Shares of the same class, each of which ranks *pari passu* in respect of all rights and entitles the holder to:
         1. exercise ownership and control over the Company;
         2. vote on any matter to be decided by a vote of Company of the Company;
         3. participate in any distribution of profit;
         4. share in the distribution of the company’s residual value upon its dissolution; and
         5. access the Company’s information.
      2. The Board shall not have powers to:
         1. increase or decrease the number of authorised Shares of any class of the Shares; or
         2. consolidate and reduce the number of the Company’s issued and authorized Shares of any class;
         3. subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class without an increase of its capital;
         4. reclassify any classified Shares that have been authorised but not issued; or
         5. classify any unclassified Shares that have been authorised but not issued; or
         6. determine any preference, rights, limitations or other terms of any Shares,

and such powers shall only be capable of being exercised by the Shareholder as the sole shareholder.

* + 1. The authorisation and classification of Shares, the numbers of authorised Shares of each class, and the preferences, rights, limitations and other terms associated with each class of Shares as set out in this MOI may be changed only by an amendment of this MOI.
  1. **Issue of Securities** 
     1. Any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transaction shall in accordance with the provisions of section 41(3) require the approval of the Shareholder.
     2. The Shareholder may at any time authorise the Directors to issue Shares of the Company.
  2. **Register and Form of Security** 
     1. The Securities of the Company must be issued in certificated form.
     2. The Company shall establish and maintain a Securities Register in accordance with the provisions of the Companies Act.
     3. The Securities Register shall include in its entry the information required by section 51(5) of the Companies Act.
     4. The certificate evidencing any certificated Securities of the Company must comply with the requirements set out in section 51(1) of the Companies Act.
     5. If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed “Duplicate Certificate” on payment of such reasonable fee, if any and on such terms as the Board may determine.
  3. **Debt Instruments** 
     1. The Board shall not without the prior written approval of the Shareholder issue secured or unsecured debt instruments as set out in section 43(2) of the Companies Act.
     2. The authority of the Board to authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2) of the Companies Act is accordingly limited by this MOI.
     3. No special privileges associated with the debt instruments as contemplated in section 43(3) of the Companies Act may be granted to the holder and therefore the authority of the Board in this regard is limited by this MOI.

1. THE SHAREHOLDER
   1. **Shareholding** 
      1. The Company shall have 1 (one) shareholder being the Mangaung Metropolitan Municipality, whose shares shall not be transferable.
      2. The issued share capital of the Company shall be 1000 (one thousand) ordinary Shares, which Shares have been allotted to the Shareholder.
   2. **Termination of the Shareholding** 
      1. The Shareholder shall cease to be a shareholder:
         1. upon winding-up of the Company; and
         2. upon dissolution of the Company.
      2. The Shareholder has power in its absolute discretion, to dissolve the Company without giving any reason, including, if:
         1. the Company has direct conflict of interest to the Shareholder;
         2. it is detrimental to the interests of the Shareholder that the Company should continue to exist as a municipal entity.
         3. the Company’s mandate as contained in the Service Delivery Agreement is no longer needed.
   3. **Shareholders’ rights to Information** 
      1. The Shareholder shall through the Municipal Representative have the right to access the Company’s information as set out in section 26 (1) of the Companies Act.
      2. The Shareholder has further rights to inspect and copy the following records of the Company:
         1. a copy of the MOI;
         2. copies of the minutes and resolutions of all Meetings of the Company;
         3. a record of the particulars of the Company’s Directors as set out in section 24 (5) of the Companies Act;
         4. copies of all reports presented at any Meeting of the Company;
         5. notice and minutes of all meetings, including the resolutions thereof; and
         6. copies of any written communications sent by the Company to its employees or Directors.
      3. In addition to the above, the Company shall maintain a security’s register, which the Shareholder has a right to access and copy.
   4. **Ratification of ultra vires Companies Acts**

Any ratification of any Companies Act performed by a director of the Company contrary to this MOI, as set out in section 20(2) and 20(6) of the Companies Act is subject to the approval by the Shareholder.

1. DIRECTORS AND OFFICERS
   1. **Composition and Appointment of the Board of Directors** 
      1. The Board shall comprise of a minimum number of 4 (four) and not more than 7 (seven) non-executive directors excluding the Chief Executive Officer and Chief Financial Officer who shall be executive, non-voting Board members. Directors shall be appointed in accordance section 93E of the MSA.
      2. All Board members shall be appointed by the Shareholder through its Council.
      3. The Board shall comprise of the following:
         1. a Chairperson, who shall be a non-executive Director;
         2. the Chief Executive Officer and Chief Financial Officer of the Company; and
         3. up to 6 (six) other non-executive directors of which one of them should be designated as deputy chairperson.
      4. The Shareholder shall appoint a person as an executive Director (s) of the Company as a consequence of that person holding some other office, title, designation or similar status in the Company.
      5. The Board must have the requisite range of expertise to effectively manage and guide the Business.
      6. The authority of the Board to fill any vacancy on the Board on a temporary basis, as set out in section 68 (3) of the Companies Act is limited or restricted by this MOI. Only the Council has the authority to fill a vacancy on the Board either on a temporary or permanent basis.
   2. **Term of Office of Directors**

A term of office of each Director shall be for a period of 3 (three) years or as determined by the Shareholder from time to time.

* 1. **Removal of Directors** 
     1. The Board may with the written approval of the Shareholder remove a director whom it has determined is ineligible, disqualified, incapacitated, negligent or guilty of dereliction of duty.
     2. The Director concerned must be given notice of the meeting and be afforded reasonable opportunity to make representation on the matter before a vote is taken by the members.
     3. The Shareholder may remove one or more Directors of the Company in the following circumstances:
        1. non-attendance of the Board’s meetings for at least 3 (three) consecutive meetings;
        2. if the performance of the director is unsatisfactory;
        3. if a Director, either through illness or for any other reason, is unable to perform the functions of office effectively;
        4. if a Director is convicted of fraud or theft nor any offence relating to fraudulent conduct;
        5. if a Person is disqualified to be a Director as contemplated in section 93F of the MSA, if he or she:
           1. is an official of the Shareholder;
           2. holds office as a councillor of any municipality;
           3. is a member of the National Assembly or a provincial legislature;
           4. is a permanent delegate to the National Council of Provinces;
           5. was convicted of any offence and sentenced to imprisonment without option of a fine, and a period of five years since completion of the sentence has not lapsed;
           6. has been declared by a court to be of unsound mind; or
           7. is an unrehabilitated insolvent;
        6. if the Director has failed to comply with or breached any legislation regulating the conduct of directors, including any applicable code of conduct;
        7. misconduct or breach of trust by the Director;
        8. for a breach of fiduciary duty; and
        9. as a consequence of the Director:
           1. acting without the necessary authority;
           2. acquiescing to the company carrying on business recklessly;
           3. being present or participating in a decision or failing to vote against certain specified decisions which contravene the Companies Act;
           4. being party to any act or omission intended to defraud the Company; and
           5. signing or authorising the publication of any false or misleading financial statements.
  2. **Authority and Duties of the Board of Directors** 
     1. The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Companies Act is governed by this MOI.
     2. Subject to accountability and effective oversight by the Shareholder, the Board has power to direct and control the business of the Company.
     3. The Board has authority to make decisions to determine the future of the Company and protect its assets and reputation.
     4. The Board must provide leadership and retain full and effective control over the direction and performance of the Company.
     5. The Board must provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the municipal entity.
     6. The Board must communicate openly and promptly with the Shareholder and ensure that the Company complies with all applicable legislation and agreements.
     7. The Board is accountable to the Shareholder and therefore it owes the Shareholder a duty of good faith.
     8. Subject to the approval of the Shareholder, the Board has the power to appoint Company Secretary.
     9. A Director must disclose to the Board and to the Shareholder, any direct or indirect personal or business interest that the Director or his or her spouse or partner may have in any matter before the Board in accordance with section 75 of the Companies Act.
     10. A Director must at all times act in accordance with the Code of Conduct for directors referred to in section 93L of the MSA.
     11. The Board may from time to time by resolution delegate any power that the Board has to the executive Directors, CEO, or any Prescribed Officer, provided that such powers so delegated may be similarly withdrawn.
     12. As set out in the Service Delivery Agreement, the Board in consultation shall ensure that in each Financial Year, a budget of the Company is prepared in accordance with the provisions of section 87 of the MFMA and submitted to the Shareholder.
     13. In addition to the budget referred in clause 12.4.12 above, a mid-year budget and performance assessment must also be performed by the Company in terms of section 88 of MFMA.
  3. **Annual General Meeting**
     1. The Company must hold an annual general meeting once in every calendar year but no more than 15 months after the date of the previous annual general meeting.
     2. Inaddition to the requirements of clause 12.5.3, the notice calling an annual general meeting must include:
        1. the financial statements to be presented, or a summarised form thereof; and
        2. directions for obtaining a copy of the complete annual financial statements for the preceding financial year.
     3. The agenda at an annual general meeting shall include but shall not be limited to:
        1. presentation of the Directors’ report and annual financial statement for the immediately preceding financial year;
        2. election of Directors to the extent required by the Companies Act or this MOI; and
        3. any matter raised by the Shareholder, with or without advance notice to the Company.
  4. **Directors and Board Committee Meetings** 
     1. The authority of the Board to consider a matter other than at a meeting, as set out in section 74 of the Companies Act is not limited or restricted by this MOI.
     2. The Council must designate a counsellor or an official of the Shareholder, or both, as the representatives of the Shareholder which representatives must comply with section 93D of the MSA. A counsellor needs to adhere to the code of conduct in Schedule 1 of the MSA.
     3. Unless directed otherwise by the Shareholder, the Municipal Representative shall have a non-participating observer status at the meeting of the Board.
     4. The meetings of the Board and Board committees must be open to the official representative of the Shareholder from time to time.
     5. The right of the Board to requisition a meeting of the Board, as set out in section 73(1) of the Companies Act may be exercised by at least 2 (two) Directors.
     6. The MOI does not limit or restrict the authority of the Board to:
        1. conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Companies Act;
        2. determine the manner and form of providing notice of its meetings, as set out in section 73(4) of the Companies Act;
        3. proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 7(5) of the Companies Act; or
        4. consider a matter other than at a meeting.
     7. Each Director has one (1) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
     8. In the event of equal votes, the Chairperson shall be entitled to a second or casting vote.
     9. The company must keep minutes of the meetings of the Board, and any of its committees.
     10. The Chairperson of the Board may call the Board Meeting at any time as he or she deemed necessary.
  5. The Chairperson must ensure existence of and maintain official lines of communications between the Company and Shareholder through him/herself and the Executive Mayor regarding governance and other responsibilities of the Company.
  6. **Proceedings at Board Meetings**
     1. The Chairperson of the Board shall preside as Chairperson at every Board Meeting.
     2. The appointment of the Chairperson and their term of office shall be determined by Council from time to time.
     3. If the Chairperson of the Board is not present at a meeting or unable to chair the meeting for whatever reason given at the meeting, the directors present at the meeting shall elect (by simple majority) any member of the Board to preside in the meeting.
     4. The quorum for a Board Meeting to begin or for a matter to be considered is at least 50% +1 (fifty plus one percent) of the Directors.
     5. At any Board Meeting, members of the Board shall be entitled to vote by show of hands or by secret ballot.
     6. In the event of equal votes, the Chairperson shall be entitled to a second or casting vote.
     7. The Company must keep minutes of the meetings of the Board, and any of its committees.
     8. The minutes shall include, amongst others, the following:
        1. any declaration given by notice or made by a director, as required by section 75 of the Companies Act; and
        2. every resolution adopted by the Board
     9. Resolutions adopted by the Board:
        1. must be dated and sequentially numbered; and
        2. are effective as of the date of the resolution, unless the resolution states otherwise.
     10. Any minutes of a meeting, or a resolution, signed by the Chairperson of the meeting, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
  7. **Shareholder Meetings**
     1. Requirement to hold meetings
        1. The Company may hold any Shareholder meetings other than those specifically required by the Companies Act.
        2. The Board or the Executive Mayor of the Shareholder may call a Shareholders meeting at any time.
        3. Every Shareholders meeting of the Company must be reasonably accessible to the Municipal Representatives as contemplated in section 93D of the MSA as amended.
     2. Location of Shareholders Meetings
        1. The Board or the Executive Mayor may determine the location of any Shareholders meeting of the Company.
        2. A Shareholders meeting of the Company shall not be held in any foreign country.
     3. Notice of Shareholders Meetings
        1. The minimum number of days for the Company to deliver a notice of a Shareholders meeting to the Shareholder, as required by section 62 of the Companies Act is as provided for in section 62(1) of the Companies Act.
        2. A notice of a Shareholders meeting must be in writing, and must, where appropriate, comply with the provisions of section 62(3) of the Companies Act.
        3. If the Company fails to give the required notice of a Shareholders meeting, or if there was a material defect in the giving of the notice, the meeting may still proceed.
        4. With regard to the record date for the purpose of section 59(1) of the Companies Act, the Board does not determine such a record date for any action or event, subject to section 59(3) of the Companies Act.
  8. **Indemnification of Directors** 
     1. The authority of the Board to advance expenses to a Director or indemnify a director in respect of the defence of legal proceedings, as set out in section 78(3) of the Companies Act is not limited or restricted by this MOI.
     2. The authority of the Board to indemnify a Director in respect of liability as set out in section 78(5) of the Companies Act is not limited or restricted by this MOI.
     3. The authority of the Board to purchase insurance to protect the Company, or a Director as set out in section 78(6) of the Companies Act is not limited or restricted by this MOI.
  9. **Accountability and Reporting** 
     1. In each financial year, the Company must prepare annual financial statements, which fairly represent the Company’s state of affairs in accordance with section 122 of the MFMA.
     2. The Company must for each financial year prepare an annual report for the Shareholder to provide record of the activities and performance of the Company.
     3. The Company’s key performance indicators shall be set out in its Business Plan, Shareholder Compact and KPIs agreed to annually between the Shareholder and the Company as required by section 87 of the MFMA.
     4. The Shareholder shall establish a performance management system in line with the priorities, objectives, indicators and targets contained in its IDP.
     5. The Company shall on a quarterly basis submit progress report and/or any other reports required by the Shareholder with sufficient information to enable the Shareholder to assess its performance towards attaining the set service delivery objectives.
     6. In compliance with the MFMA, the Board is required in each financial year to submit a proposed budget for the Company to the Shareholder by not later than 150 (one hundred and fifty) days before the start of the Company’s financial year.
  10. **Prescribed Officers**

The authority of Board to appoint any officer it considers necessary to better achieve the objects of the Company is not limited or restricted by this MOI.

* 1. **Chief Executive Officer** 
     1. The Board shall in consultation with the Shareholder procure the appointment of the Chief Executive Officer in accordance with section 93J of the MSA and in terms of section 93 of the MFMA and who shall be appointed as a full-time employee of the Company and manager of the Company’s office.
     2. The Chief Executive Officer shall be appointed for a fixed term contract which shall not be more than 5 (five) years, subject to renewal by the Board and approval by the Shareholder.
     3. The Chief Executive Officer shall be a member of the Board and is accountable to the Board for the management of the Company.
  2. Chief Executive Officer must comply with various duties and responsibilities as set out in section 94 to 107 of the MFMA.
  3. **Executive Mayor**

The Executive Mayor is the chief representative of the Shareholder in all engagements with the Board and Annual General Meetings and may at any time call or convene any meeting of shareholders or any other general meeting comprising the Board and the representatives of the Shareholders.

* 1. **Liabilities of the Directors and Prescribed Officers**

The Company may recover loss, damages or costs sustained by the Company from the Director or Prescribed Officer under the following circumstances:

* + 1. in terms of the principles of the common law or the provisions of the law of delict relating to the breach of fiduciary duties;
    2. where a Director or Prescribed Officer acted in the name of the Company or signed anything on behalf of the Company while the Director or Prescribed Officer knew that he or she lacked necessary authority;
    3. the Director or Prescribed Officer is a party to an actor omission by the Company despite knowing that the actor omission was calculated to defraud a creditor, employee or Company;
    4. the Director signed, consented to or authorised the publication of any financial statements that contained untrue statement or a statement to the effect that a person consented to be a director of the Company, when no such consent had been given, despite knowing that the statement was false, misleading or untrue; and
    5. any other reason set out in section 77 of the Companies Act.

1. THE BOARD COMMITTEES
   1. The authority of the Board to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1) of the Companies Act or to include in any such committee persons who are not directors, as set out in section 72(2)(a)of the Companies Act is not restricted by this MOI.
   2. The committee appointed by the Board has the full authority of the Board and may consult with and receive advice from any person.
   3. A non-director appointed to a Board Committee will not have any voting rights on any matter to be decided upon by that committee.
   4. At least 1 (one) representative from Shareholder shall be entitled to attend all Board Committees’ Meetings.
   5. the Board is required under this MOI to appoint the following Board Committees:
      1. remuneration committee;
      2. human resource committee;
      3. audit and risk committee;
      4. social and ethics committee;
      5. governance committee; and
      6. information and technology committee.
   6. The duties and responsibilities of each committee is set out under the Shareholders Compact.
   7. The Board may combine two or more of the committees for purposes of efficiency and effectiveness.
2. COMPULSORY PROVISIONS
   1. **Company Secretary** 
      1. The Company is required in terms of the Companies Act to appoint a Company Secretary.
      2. Accordingly, the Board has authority to appoint a person who has the requisite knowledge of or experience in relevant laws and who is a permanent resident of South Africa to serve as a Company Secretary.
      3. A juristic person or partnership may also be appointed as Company Secretary.
      4. The Company Secretary’s responsibilities shall include:
         1. to provide the Board with guidance as their duties and responsibilities
         2. make the Directors aware of all relevant Regulatory Provisions applicable to the Business;
         3. ensuring the compliance of the Company with this Shareholder Compact, the MOI, the Service Delivery Agreement, Financial and Uniformity Protocols and Regulatory Provision;
         4. ensuring that the minutes of all the board meetings and the meetings of any committees of the Directors are properly recorded and kept;
         5. certifying in the Company’s annual financial statements whether the Company has filed required returns and notices appear to be true, correct and up to date; and
         6. ensure that a copy of the Company’s annual financial statements is sent, in accordance with the Companies Act and the MFMA, to any party entitled to it; and
         7. carrying out the functions of a person designated in terms of section 33 (3) of the Companies Act.
   2. **Company Auditor** 
      1. The Company shall in accordance with the section 94 of the Companies Act appoint an internal Auditor.
      2. In accordance with section 92 of the MFMA, the Auditor General shall be an external Auditor of the Company.
      3. Any person, including a juristic person or partnership may be appointed as an Auditor if:
         1. a person is a registered Auditor;
         2. not prohibited from being a Director of a company;
         3. not a Director or prescribed officer of the Company;
         4. not an employee or consultant of the Company who was or has been engaged for more than one year in the maintenance of any of the Company’s financial records or the preparation of any of its financial statements;
         5. not a director, officer or employee of a person appointed as Company Secretary; and
         6. not a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work, for the company.
      4. The same individual may not serve as the auditor or designated auditor of the Company for more than five consecutive financial years.
      5. If an individual has served as the auditor or designated auditor of a company for two or more consecutive financial years and then ceases to be the auditor or designated auditor, the individual may not be appointed again as the auditor or designated auditor of that company until after the expiry of at least two further financial years.
      6. The Auditor’s right to the Company shall include amongst others the following:
         1. the right of access at all times to the accounting records; and
         2. all books and documents of the Company, and is entitled to require from the directors or prescribed officers of the Company any information and explanations necessary for the performance of the auditor’s duties.
      7. The Auditor shall be entitled to:
         1. attend any Board meeting;
         2. receive all notices of and other communications relating to any general Board meeting; and
         3. be heard at any Board meeting on any part of the business of the meeting that concerns the auditor’s duties or functions.
   3. **Bank Accounts**
      1. Subject to approval of the Shareholder with any conditions set thereto, the Company shall open and maintain bank accounts in its name.
      2. The Company is not permitted to:
         1. open a bank account abroad;
            1. open a bank account with an institution not registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990);
            2. open a bank account otherwise than in the name of the entity; and
            3. open a bank account without the approval of the Board.
      3. The Company must submit the particulars of a new bank account, in the manner prescribed in terms of section 86(1)(a) of MFMA, to the Parent Municipality in writing within 90 days after the entity has opened such an account.
      4. The Company shall also, annually before the start of a financial year, submit the particulars of all bank accounts held by the entity in the manner prescribed in terms of section 86(1)(b).
      5. The Shareholder shall at all times have access and all rights to the bank accounts held by the Company.
   4. **Accounts and Audits**
      1. The books of accounts shall be kept at the registered office of the Company or at such other place as the Directors may deem fit.
      2. Directors shall have a right of access at all times to the accounting records and all books and documents of the Company.
      3. The Directors shall from time to time in accordance with the Companies Act, cause to be prepared and laid before the Company in a general meeting such Annual Financial Statements as required by the Companies Act.
      4. A copy of the Annual Financial Statement shall not less than 21 (twenty-one) days before the date of the annual general meeting to be sent to the Shareholder before a date appointed for the meeting.