**SHAREHOLDER COMPACT**

**for the year 2020/2021**

entered into between

**MANGAUNG METEROPOLITAN MUNICIPALITY**

(a 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)

Hereafter referred to as the “**Shareholder**” or “**Parent Municipality**”

and

**CENTLEC (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 wholly owned by Mangaung Metropolitan Municipality 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)

[the words “RF” shall be inserted after the words Centlec once the company MOI has been lodged and the company has been ring-fenced]

Hereafter referred to as the “**Company**” or “**Municipal Entity**”

The shareholder compact should be accompanied by the relevant annual business plan, annual budget, and specific KPI’s or policies relating thereto.

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1. DEFINITIONS AND INTERPRETATION

NOW THEREFORE IT IS HEREBY AGREED as follows:

* 1. In this Agreement the following expressions have the following meanings:
		1. "**Agreement**" means this Shareholder Compact together with any annexures and schedules hereto;
		2. "**Affiliate**" means, in relation to any Party, that Party's subsidiary or holding entity or any subsidiary of such holding entity;
		3. "**Annual Budget**" means the annual budget of the Company approved in terms of clause 12 and in accordance with section 87 of the MFMA;
		4. "**Board**" means the board of directors of the Company as constituted from time to time, being the accounting authority and governing body of the Company;
		5. "**Business**" means the business conducted by the Company being the supply of electricity in the Contract Area;
		6. "**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;
		7. "**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(5)(d) of the MFMA;
		8. "**CEO**" means the Chief Executive Officer of the Municipal Entity appointed in terms of section 93J of the MSA;
		9. "**Code of Ethics**" means the Company’s code of ethics as developed by the Shareholder from time to time;
		10. "**Companies Act**" means the Companies Act 71 of 2008;
		11. "**Company Secretary**" means the company secretary of the Company appointed in terms of section 86 of the Companies Act;
		12. "**Constitution**" means the Constitution of the Republic of South Africa Act, Act 108 of 1996;
		13. "**Contract Area**" means the area for which the Services are provided to the community by the Company;
		14. "**Council**" means the Mangaung Metropolitan Municipality Council or the Shareholder as defined in section 1 of the Structures Act;
		15. "**Effective Date**" the date of approval of this compact by the Council of the Shareholder;
		16. "**External Auditor**" means the Auditor-General as defined in section 1 of the Municipal Finance Management Act 56 of 2003;
		17. "**IDP**" means the Shareholder’s integrated development plan adopted by the Council;
		18. "**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;
		19. "**MAT Regulations**"means the Municipal Asset Transfer Regulations, 2003;
		20. "**MFMA**"means the Local Government: Municipal Finance Management Act No. 56 of 2003 and its Regulations, as amended from time to time;
		21. "**MSA**"means the Local Government: Municipal Systems Act 32 of 2000, as amended;
		22. "**MOI**" means the memorandum of incorporation of the Company;
		23. "**City Manager**"means the Municipal Manager appointed in terms of section 54A of the MSA;
		24. "**Municipal Representative**"means a councillor or an official of MMM or both, designated as a representative of the Council in terms of section 93D of the MSA;
		25. "**Parties**"meansthe Shareholder and the Company and “**Party**” means either one of them, as the context may require;
		26. “**Protocol for Corporate Governance**” means a guiding corporate governance document developed by the Department of Public Enterprises;
		27. "**Records**"means the Company’s constitutive documents and performance parameters, which shall include the following documents; this Agreement, the Business Plan, the Code of Ethics and any documents relating to the aforementioned;
		28. "**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, which shall include:
			1. the MFMA;
			2. the MSA;
			3. the Structures Act; and
			4. the Constitution;
		29. "**SDBIP**" means the approved service delivery and budget implementation plan for the current financial year;
		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 Contract Area, and anything related thereto;
		32. “**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;
		33. "**Shareholder Compact**" means this shareholder compact recorded herein together with any annexures and schedules hereto;
		34. "**Signature Date**" means the date of signature of this by the last signing party;
		35. "**South Africa**" means the Republic of South Africa; and
		36. "**Structures Act**" means the Municipal Structures Act No. 117 of 1998.
	2. **Interpretation**
		1. Any substantive provision conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1, or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of this Agreement.
		2. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
		3. Subject to clauses 1.2.5 and 1.2.12, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
		4. A reference to a statutory enactment shall be construed as a reference to that enactment as at the Signature Date, and as amended or substituted from time to time.
		5. Unless otherwise indicated, reference to “days” shall be construed as calendar days. Any reference to “business hours” shall be construed as being the hours between 08h00 and 16h00 on any Business Day.
		6. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day, or, where the last day falls on a day that is not a Business day, the next succeeding Business day.
		7. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.
		8. No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having, or being deemed to have, structured, drafted or introduced such provision.
		9. The expiration of this Agreement shall not affect such of the provisions of this Agreement that expressly provide that they will operate after any such expiration or termination, or which, of necessity, must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
		10. The words “include” and “including” mean “include without limitation” and “including without limitation”. The use of the words “include” and “including”, followed by a specific example or examples, shall not be construed as limiting the meaning of the general wording preceding it.
		11. Any reference in this to “this Agreement” or any other or document, shall be construed as a reference to this Agreement, or, as the case may be, such other or document, as amended, varied, novated or supplemented from time to time.
		12. To the extent that this Agreement incorporates any annexures, such annexures shall have the same force and effect as if set out in the body of this Agreement. In this Agreement, the words “clause” or “clauses” and “annexure” or “annexures”, refer to clauses of and annexures to this Agreement.
1. INTRODUCTION
	1. The Shareholder is in terms of the Constitution and other applicable legislation charged with the responsibility of ensuring the sustainable provision of municipal services within its area of jurisdiction.
	2. The Shareholder has adopted a service delivery model for the provision of municipal services through an external mechanism as contemplated in section 76(b) of the MSA.
	3. The Company is a Municipal Entity established in terms of the MFMA , MSA and incorporated in terms of the Companies Act and has entered into the Service Delivery Agreement with the Shareholder to provide the Services on behalf of the Shareholder in the Contract Area.
	4. The MSA empowers the Shareholder as Parent Municipality to exercise the shareholder, statutory, contractual, corporate or other rights and powers it may have over the Company.
	5. Section 93B of the MSA requires the Shareholder to exercise sole control of its Municipal Entity’s by ensuring the establishment of annual performance objectives, and the performance of the Municipal Entity’s against the agreed performance objectives and indicators.
2. PURPOSE
	1. The purpose of this Shareholder Compact is to regulate the relationship between the Shareholder of the Company and the Board of directors of the Company against the performance objectives set out by the Shareholder.
	2. This Agreement relates to the current strategic, corporate and business plans of the Municipal Entity.
	3. Based on the Protocol for Corporate Governance, the Shareholder Compact seeks to:
		1. outline and strengthen the accountability of the Board to the Shareholder with respect *inter alia*; to the service delivery, financial and business mandate of the Company;
		2. promote transparency between the two Parties; and
		3. promote good governance in line with the Regulatory Provisions, the Service Delivery Agreement, uniformity protocols and the SDBIP.
3. STATUS AND DURATION OF THIS AGREEMENT
	1. This Shareholder Compact shall commence on the Effective Date and shall endure until reviewed and adopted by the Shareholder.
	2. The Shareholder Compact shall be reviewed annually together with the Annual Budget, IDP and budget related policies on or before 31 May of each year.
	3. This Shareholder Compact is not intended to replace the MOI, the Service Delivery Agreement, IDP and the Business Plans, but is rather complimentary to these documents and should be read in conjunction with such agreements.
	4. If there is a conflict or inconsistency between the provisions of this Shareholder Compact and any Regulatory Provision, the provisions of the Regulatory Provision shall prevail.
	5. In the event the provisions of this Agreement are in any way inconsistent or conflict with the provisions of the MOI and the Service Delivery Agreement, the provisions of the MOI shall prevail.
	6. Without detracting from the provisions of clause 4.3 and clause 4.4, the Parties shall nevertheless, as soon as reasonably possible after they become aware of any conflict or inconsistency between the provisions of this Agreement and the MOI, meet in good faith with a view to finding a solution to remove such conflict or inconsistency.
4. NUMBER AND APPOINTMENT OF THE BOARD
	1. The Board shall at all times consist of no more than 7 (seven) Directors of which at least a two thirds shall be non-executive Directors ,excluding the Chief Executive Officer and the Chief Financial Officer who shall be executive and non-voting members of the Board.
	2. The Council shall appoint the Directors from a list of nominations compiled by the Shareholder in accordance with section 93E of the MSA.
	3. The Council shall have sole and absolute discretion to remove or recall one or more Directors of the Company for any reasons including those not set out in section 93G of the MSA.
5. UNDERTAKINGS OF THE SHAREHOLDER
	1. The Shareholder undertakes:
		1. to allow the Board to carry on the Business as approved in the Business Plan and within business principles, which shall include issuing the Board with sufficient, notices, warning and response times;
		2. not to delay in delivering any critical decisions required;
		3. to allow the Board to get on with strategic direction and control within its mandate and performance objectives;
		4. to seek regular contact and consultations with the Board; and
		5. to establish an appropriate mechanism for Board reporting to the Shareholder in accordance with the applicable legal framework.
6. UNDERTAKINGS OF THE BOARD
	1. The Board undertakes:
		1. to ensure that the Company is financially viable and properly managed to enhance the interest of the Company in the fulfilment of its mandates and to enhance the interests of the Shareholder;
		2. to take full responsibility for the overall performance of the Company and is fully accountable to the Shareholder for such performance;
		3. to effectively control the affairs of the Company and closely monitor the management in implementing the Board plans and strategies;
		4. to adhere to the Business Plan and the budget as approved by the Board and by the Shareholder;
		5. to ensure compliance with any business rules or policies established by the Shareholder which are applicable to the Company;
		6. to act in good faith and use its best endeavours to assist the Shareholder in its proper provision of the Services;
		7. to exercise the duty of care, skill and loyalty to the Company;
		8. to have an agreed procedure in terms of which the director/s may, if necessary, solicit independent professional advice at the expense of the Company;
		9. to commit itself to exercising strategic leadership, enterprise and integrity in directing the affairs of the Company to fulfil its mandates and to ensure that the Company is financially sustainable;
		10. to have an agreed, planned and structured consultative process on the developments around the restructuring of employees, employee unions, suppliers and the general public where applicable;
		11. permit and grant the chief financial officer and the City Manager to have overriding access and signatory powers to the Company bank accounts for purposes of step in provisions in clause 27.2.3.
		12. to use its best endeavours to respond to any request from the Shareholder for information or any circumstances requiring a decision of the Board within 30 (thirty) days of receipt of such written request;
		13. to submit to the Shareholder, by no later than 7 (seven) Business Days after the end of each month, a detailed statement on the state of the Company’s budget and financial performance in full compliance with section 87(11) of the MFMA;
		14. to develop an effective and pro-active risk management strategy as well as the mitigation of such risks, which will be submitted to the Shareholder;
		15. to report to the Shareholder in its quarterly reports on the effective implementation of the risk management strategy;
		16. to procure that the Company shall not engage in, agree to, perform or undertake any of the following acts or matters, except as may be approved or agreed to by the Shareholder:
			1. enter into any transaction that binds or may bind the Company into any future financial commitments including any borrowing;
			2. purchase or dispose any significant infrastructure asset;
			3. suspend, cease, abandon or change the nature of the Company’s Business;
			4. enter into, extend or renew long term agreements beyond three years.
		17. to ensure that all policies of the Company are approved by and comply with and aligned with those of the Shareholder.
	2. On an annual basis, on or before the end of the second month after the financial year end, the Board undertakes to review and evaluate its performance as a collective, the performance of the chairperson, the performance of the individual Directors, the performance of Board Committees and the performance of the CEO. Such evaluation shall include but not limited to the performance of the individual office bearers in terms of, amongst others, the following:
		1. the overall annual performance of the Company;
		2. implementation of the Company’s strategy as contained in the Business Plan, Service Delivery Agreement and the SDBIP;
		3. compliance with the provisions of this Agreement; and
		4. upholding the Shareholder’s corporate governance policies.
7. 2020/2021 MANDATE TO BOARD
	1. The Board shall carry out the following shareholder mandate during the 2020/2021 financial year:
		1. cost reduction in terms of the Municipal Cost Containment Regulations of 2019;
		2. improved audit outcome;
		3. implement the Shareholder’s approved financial recovery plan in so far as applicable to Centlec;
		4. establish a support programme to municipality(s) as identified by the MEC for Cooperative Governance and Traditional Affairs and the Executive Mayor from time to time within resource capability and limitations;
		5. Rationalise the organisational structure for purposes of and to eliminate operational cost duplications and allow integration of certain functions to the parent municipality. For clarity purposes functions to be integrated to the Parent Municipality shall include:
			1. revenue collection to the extent not provided in the Service Delivery Agreement;
			2. call Centre;
			3. ICT systems, data centre and data security;
			4. law enforcement, subject to South African Police Services Act to form part of the Mangaung Metropolitan Police Directorate;
			5. human resources policy development;
			6. training;
			7. marketing and communications;
			8. treasury to the extent not provided for in the assignment of responsibilities in the Service Delivery Agreement;
		6. explore and possibly establish mixed energy innovation business venture as a compliment to the fifth utility programme; and
		7. explore and possibly take over Eskom accounts and business where it operates within the Mangaung Metropolitan Municipal area.
8. BOARD CHAIRPERSON
	1. The Board must be led by a chairperson, who shall be an independent non- executive director duly appointed by the Shareholder.
	2. The chairperson together with the CEO shall be the point of contact in dealings with the Shareholder unless otherwise delegated.
	3. The chairperson’s responsibilities must be separate from those of management led by the CEO.
	4. The chairperson is the head of the Board and his/her responsibilities include, *inter alia*, the following:
		1. ensuring that all Board members are fully involved and informed of any business issue on which a decision has to be taken;
		2. ensuring that the executive Directors play an effective management role and participate fully in the operation and governance of the Company;
		3. ensuring that executive Directors monitor the Business and contribute to the business decisions of the Company;
		4. exercise independent judgment, acting objectively and ensuring that all relevant matters are placed on the agenda and prioritised properly;
		5. working closely with the Company Secretary in ensuring effectiveness of the Board and that at all times all Board members fully understand the nature and extent of their responsibilities as Directors;
		6. ensuring that the performance of the CEO is appraised on an annual basis; and
		7. ensuring that on a quarterly basis, the Executive Mayor is appraised of the performance of the Company on governance, service delivery and budget matters.
9. COMPANY SECRETARY

The Company Secretary has a direct functional line of reporting to the Board Chairperson and dotted administrative line of reporting to the CEO his/her responsibilities which shall include:

* 1. to provide the Board with guidance as regards 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, Group 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. ensuring 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.
1. BOARD COMMITTEES

The Board shall establish and maintain the following committees in accordance with the principles of good governance. The Board shall appoint at least one independent and non – executive director that will be part of each committee and unless directed otherwise by the Shareholder, the Municipal Representative shall have a non-participating observer status on each committee.

Each committee shall be entitled to require from any Director or Company officer any information or explanation necessary for the performance of the committee’s functions.

* 1. **Remuneration Committee**

The Board shall maintain a remuneration committee ("**Remuneration Committee**"), which shall consist of not less than two members nominated by the Board. The Remuneration Committee shall make decisions by way of a majority vote and shall have authority to determine the following matters (all subject to the limits set out in and in full compliance with the provisions of the MSA and MFMA): -

* + 1. the remuneration and/or fees and any changes to the remuneration and/or fees payable to the Directors from time to time;
		2. the remuneration and any changes to the remuneration payable to members of the senior management of the Company, including bonuses (if any);
		3. the overall annual increase (if any) in the remuneration of the employees of the Company; and
		4. the Company's policy in respect of the structure of remuneration packages and of bonuses (if any).
	1. **Human Resource Committee**

The Board shall maintain a human resource committee (“**HR Committee**”) which shall consist of not less than 2 (two) members nominated by the Board. The HR Committee shall make decisions by way of a majority vote and shall have authority to determine the following matters: -

* + 1. the recommendations to be made to the Board on specific remuneration packages for each of the executive Directors;
		2. the recommendations to be made to the Board as to the fees to be paid to each non-executive Director;
		3. evaluating the performance of individuals in achieving key result areas and contributing to the success of the Company and the achievement results.
	1. **Audit and Risk Committee**

The Board shall maintain an audit and risk committee (“**Audit and** **Risk Committee**”) which shall consist of not less than 2 (two) members nominated by the Board. The Audit and Risk Committee shall make decisions by way of a majority vote. The Audit and Risk Committee is required to perform the responsibilities assigned to it in terms of section 165 and 166 of the MFMA. The Audit and Risk Committee shall have authority to determine the following matters: -

* + 1. the auditing process, financial reporting, the system of corporate controls and risk management of the Company, and when required, to make recommendations to the full Board for approval;
		2. the adequacy and effectiveness of the Company's policies and procedures to assess, monitor and manage financial and non-financial business risks of the Company;
		3. The adequacy and effectiveness of the internal compliance and control systems, including the accounting, financial and tax controls of the Company;
		4. any incident involving fraud or significant breakdown of the Company's internal controls;

and make recommendations to the Board in relation thereto.

* 1. **Social and Ethics Committee**

The Board shall maintain a social and ethics committee (“**Social and Ethics Committee**”) which shall consist of not less than 2 (two) members nominated by the Board. The Social and Ethics Committee shall make decisions by way of a majority vote and shall have authority to determine the following matters: -

* + 1. the Company’s good corporate citizenship, including *inter alia*, the following: -
			1. the promotion of equality;
			2. the prevention of unfair discrimination;
			3. the reduction of corruption;
			4. the contribution to development of the communities with the Company serves; and
			5. the sponsorship, donation and charitable giving.
		2. environmental, health and public safety related matters; and
		3. consumer relationship, including the Company’s advertising and public relations.
	1. **Governance Committee**

The Board shall maintain a governance committee (“**Governance Committee**”) which shall consist of not less than 2 (two) members nominated by the Board. The Governance Committee shall make decisions by way of a majority vote and shall have authority to determine the following matters: -

* + 1. the evaluation of the governance, social and environmental performance of the Company; and
		2. the provision of regular updates on the implementation of the Regulatory Provisions.
	1. **Information Technology Committee**
		1. The Board shall maintain an Information and Technology Committee (“**IT Committee**”) which shall consist of not less than 2 (two) members nominated by the Board. The IT Committee shall make decisions by way of a majority vote and shall have authority to determine the following matters:
			1. the effective use of technology and information within the Company;
			2. the Company’s IT and business strategy,
			3. assisting the Board in its tasks of directing, evaluating and monitoring of the technology and information function of the Company; and
			4. how the underlying dynamics that govern changes and technological changes and risk have the potential to alter the Company’s short-term business needs with long-term technology and information investments.
		2. It is recorded that the IT Committee shall take a holistic view of the Company within the context of IT capacity, integration with the Parent Municipality IT and its systems architecture, including external service providers, when considering resource investment and allocation for the Company.
1. FINANCIAL REPORTING
	1. The Board shall keep up to date Records of the Company.
	2. The Board shall ensure that in each financial year, an annual report is prepared in accordance with the requirements of the MFMA and submitted together with the annual report to the Shareholder.
	3. The financial statements as audited by the External Auditor, and delivered to the Shareholder shall be certified by the Company Secretary as giving a true and fair view of the Company’s financial condition and operations as at the date at which those financial statements were drawn up.
	4. The Board shall produce any document, data or information reasonably requested by the Shareholder from time to time. In any event the Shareholder shall have rights to unrestricted access and to all the books and bank accounts belonging to the Company.
2. ANNUAL BUDGET
	1. The executive Directors shall every year by no later than 90 days prior to the start of the financial year of the Company, submit to the Shareholder for approval a proposed Annual Budget for the Company, in the form and level of detail determined by the Board from time to time.
	2. The Annual Budget shall include but not be limited to:
		1. a projected income statement, balance sheet and cash flow statement for the ensuing financial year; and
		2. a capital expenditure programme specifying amounts outstanding on approved capital expenditure brought forward from the prior year as well as proposed future capital expenditure commitments of the Company.
	3. The Board shall evaluate, amend and approve the proposed Annual Budget no later than 30 days before the start of the financial year, taking into account any recommendations and amendments of the Shareholder.
	4. The Annual Budget shall be considerate of the following effectiveness, efficiency and funding factors:
		1. the need for isolating and eliminating as far as possible duplications on expenditure items to those of the shareholder;
		2. the need to optimise service delivery utilising available resources; and
		3. the need to generate revenue for the Company and ultimately the Shareholder.
	5. Until such time as the new Annual Budget has been approved in accordance with this clause 12.1, the previous Annual Budget will be applied by the Board and will be binding on the Parties as if it had been approved in accordance with this clause 12.
	6. The Board shall no later than 7 (seven) Business Days after the end of each month submit to the Shareholder a statement on the state of the current Annual Budget reflecting actual earnings and expenditure for that month and for the financial year up to the end of that month.
	7. The draft Annual Budget of the Company shall be considered by the Group Technical Budget Forum chaired by the Parent Municipality’s Chief Financial Officer and the Budget, IDP and Performance Steering Committee chaired by the responsible Member of the Mayoral Committee prior to final consideration by the Board and approval by the Shareholder.
3. SHAREHOLDER ROLE AND RESPONSIBILITIES
	1. The Executive Mayor is accountable to the Municipal Council for the exercise of the Shareholder’s powers and the monitoring of the performance of the Board.
	2. The Shareholder’s responsibilities shall include the following:
		1. the overall monitoring and reporting to Council on the financial performance, service delivery performance and overall political mandate entrusted to the Company;
		2. continuously monitoring and evaluating the performance of the Company under this Agreement;
		3. calling for general meeting(s) and or service delivery, financial performance meetings with the Chairperson of the Board and/or CEO;
		4. identifying and developing criteria in terms of which progress in the implementation of the strategies, programmes and services in the Company can be evaluated, including key performance indicators which are specific to the Shareholder and common to local government in general;
		5. maintaining policy and implementation direction while allowing the Board to exercise its powers in executing their fiduciary duties in terms of the Companies Act;
		6. ensuring that the Shareholder’s strategic objectives are communicated and understood by the Board;
		7. providing assistance through funding where possible, policy advocacy and facilitation of intergovernmental relationships to enable the Company to meet its performance objectives;
		8. assessing and monitoring the extent to which the Board achieves the objectives and specific performance targets as set out in this Agreement and where necessary, effect remedial action; and
		9. attending the Board as well as the Board Committees’ meetings of the Company through its representative in order to protect the Shareholder’s value and to secure a return on the Shareholder’s investments.
	3. The Shareholder shall use its best endeavours to respond to any request from the Board for information or any situation that requires any decision within 30 (thirty) days of receipt of such written request.
4. RESERVED MATTERS

The Company shall not without the prior written approval of the Shareholder:

* 1. enter into any borrowing transaction;
	2. conduct or engage in any business outside the jurisdiction of the Shareholder or outside the scope of the Service Delivery Agreement;
	3. enter into any transaction or contract other than in the ordinary and normal course of the Business;
	4. enter into any transaction which would result in expenditure exceeding the scope of the approved (by the Shareholder) annual business plan or the approved medium-term expenditure budget of the Company;
	5. enter into a compromise with its creditors in terms of section 155 of the Companies Act;
	6. propose any scheme of arrangement in terms of section 114 of the Companies Act;
	7. open any bank account;
	8. amalgamate or merge with any other entity or company;
	9. permit any of its assets to become subject to any form of security or lien or hypothecation;
	10. alienate or dispose any of its assets;
	11. organisational restructuring and redesign;
	12. become liable, whether as surety, co-principal debtor, guarantor or indemnifier for the liabilities of any third party;
	13. approve or adjust remuneration of executives, notwithstanding the provisions of clause 11.1 and 11.2 of this Agreement;
	14. directly or indirectly, distribute any of its funds or assets to any person other than in the furtherance of its objectives;
	15. invest its funds with a financial institution as defined in section 1 of the Financial Institutions Protection of Funds Act No. 28 of 2001;
	16. invest its funds in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act No. 1 of 1985;
	17. contracts with any service provider imposing financial obligations beyond three financial years;
	18. 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 or in terms of the Service Delivery Agreement;
		2. reasonable remuneration for goods delivered or services rendered to or at the direction of the Company;
		3. payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
		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 itself and that person or another;
		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 the Business;
		7. in respect of any legal obligation binding on the Company; and
		8. in respect of the legal expenses in relation to any matter concerning the Company.
1. STEP IN RIGHTS
	1. In addition to its powers in terms of the Memorandum of Incorporation and other legislation, the Shareholder shall have step in rights in the event of the occurrence of one or more of the following:
		1. failure by the Company to make payment of quarterly financial contributions for 6 months (two quarters) to the Shareholder in accordance with Schedule E of the Service Delivery Agreement;
		2. company revenue collection targets are below 60% for 6 consecutive months;
		3. the Board consistently fails to exercise its fiduciary duties and prudence in terms of the Companies Act, Municipal Systems Act and the Municipal Finance ManagementAct;
		4. theBoard is not functional;
		5. disclaimer or adverse audit performance; and/or
		6. serious maladministrationand the Board has failed to or unable to act.
	2. TheShareholder step-in rights shall be to:
		1. pointout an area that invokes its step-in right and direct corrective measures to the Board;
		2. dissolve the Board and appoint interim board or administrator to assume responsibilities of the management and or the Board; or
		3. accessthe bank accounts of the Company and defray any financial contribution in arrears in terms of 16.1.1 or instruct the bank to pay the amount in arrears over to the Shareholder;
		4. take any other steps or measure which it deems in its discretion to be necessary.
2. KEY PERFORMANCE INDICATORS
	1. The Shareholder shall establish a performance management system in line with the priorities, objectives, indicators and targets contained in its IDP and Budget which the financial and service delivery performance targets shall be included in the Service Delivery Agreement.
	2. The Board shall on a quarterly basis submit progress reports 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.
	3. The Board is ultimately responsible for the performance management of the Company and all employees of the Company and shall develop and implement such internal performance management tools and protocols as are deemed to be in the best interests of the Company.
	4. The performance objectives and targets that must be met by the Board and time frame within these must be met are detailed in the Business Plan.
3. CONFIDENTIALITY
	1. The Parties undertake to keep and hold secret and confidential the terms of this Agreement and any information they may acquire directly or indirectly from any disclosing Party by virtue of the fulfilment of its obligations in terms of this Agreement (“**confidential information**”).
	2. The Parties shall not during the course of their association with one another or thereafter, disclose the confidential information to any person for any reason or purpose whatsoever without the prior written consent of the other Party, save in accordance with the provisions of this Agreement.
	3. Each Party agrees not to utilise, employ, exploit or in any other manner whatsoever use the confidential information for any purpose whatsoever other than for the purposes of complying with its obligations or exercising its rights under this Agreement, without the prior express written consent of the other Party.
	4. Notwithstanding anything to the contrary contained in this Agreement, the Parties’ obligations of confidentiality will not extend to:
		1. confidential information which was generally known to the public or which had entered the public domain at the time of disclosure, or which after disclosure became generally known to the public or which entered the public domain (save where such confidential information became generally known to the public or which entered the public domain as a result of the receiving Party);
		2. confidential information which was independently received by a Party prior to the date of disclosure from a Person having the right to disclose same; or
		3. confidential information which a Party becomes obliged to disclose under an order of court or under the rules of any stock exchange or other applicable laws.
4. GOOD FAITH AND CO-OPERATION

The Parties shall co-operate and consult with each other regarding their respective rights and obligations in terms of this Agreement, it being the intention that:

* 1. the relationship between them shall be governed by the principles of utmost good faith; and
	2. this Agreement shall be administered and promoted with the highest degree of integrity between the Parties.
1. BREACH

If any Party commits a breach of any material provision or term of this Agreement and fails to remedy such breach within 7 (seven) days of receipt of written notice requiring it to do so then the aggrieved Party shall be entitled (but not obliged) without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

1. DISPUTE RESOLUTION
	1. In this clause 19:-
		1. **“MEC for local government”** means MEC as defined in section 1 of the Intergovernmental Relations Framework Act No. 3 of 2005.
		2. “**Dispute**” means any dispute, arising between the Parties in connection with: -
			1. the formation or existence of;
			2. the implementation of;
			3. the interpretation or application of the provisions of;
			4. the Parties’ respective rights and obligations in terms of or arising out of or the breach or termination of;
			5. the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of; or
			6. any documents furnished by the Parties pursuant to the provisions of,

this Agreement, or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement.

* 1. The Parties shall take all reasonable steps to avoid a dispute and shall endeavour to resolve any dispute arising out of this Agreement without resorting to a judicial process.
	2. A Party claiming that a dispute has arisen must within 21 (twenty-one) days of the date on which the dispute is said to have arisen give written notice to the other Party to the dispute specifying the nature of the dispute.
	3. Within 7 (seven) days of receipt of the notice in clause 19.3, senior representatives of the Parties must meet with each other and endeavour in good faith to settle the dispute by informal negotiations.
	4. If within 14 (fourteen) days of the dispute occurring it has not been resolved through informal negotiations, either of the Parties may declare the dispute as an intergovernmental dispute by notifying the other Party of such declaration in writing.
	5. If the dispute is of a financial nature, the Parties shall report the dispute to the National Treasury as required in terms of the MFMA.
	6. Once a formal intergovernmental dispute has been declared, the Parties must meet within 7 (seven) days of the declaration of the intergovernmental dispute to: -
		1. determine the nature of the dispute;
		2. the material issues of such dispute; and
		3. designate a facilitator.
	7. The facilitator shall be, if the matter in dispute is principally: -
		1. a legal matter - a retired Judge of the High Court of South Africa;
		2. an accounting matter - a practising chartered accountant in Bloemfontein of at least 10 (ten) years' standing;
		3. any other matter - any independent person, agreed upon between the Parties, failing which the independent person shall be appointed by the Shareholder.
	8. The facilitator must submit to the MEC, a report of the dispute, which shall include:
		1. the nature of the dispute and the precise issues that are in dispute;
		2. the mechanism or procedure to be used to settle the dispute;
		3. the decision taken by the facilitator and reasons for such decision; and
		4. any other matter that may be prescribed by regulation in terms of section47 of the [Intergovernmental Regulations Framework Act No. 13 of 2005)](https://www.polity.org.za/article/intergovernmental-regulations-framework-act-no-13-of-2005-2005-01-01)
	9. Should the Parties fail to meet in accordance with clause 19.6 above or fail to agree on the issues discussed in such meeting, the Parties shall request assistance from the MEC to settle the dispute as a final resort.
	10. The decision of the facilitator or the MEC as the case may be, shall be final and binding on the Parties and may be made an order of any competent court at the instance of either of the Parties.
	11. No Party shall be entitled to institute judicial proceedings unless the provisions of this clause 19 have been fully complied with.
	12. The negotiations and discussions conducted pursuant to this clause 19 shall be privileged and may not be used in any judicial proceedings as evidence by or against any Party.
	13. The provisions of this clause -
		1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
		2. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.
	14. The provisions of this clause 17 shall not preclude a Party from access to an appropriate court of law for interim or other appropriate relief in respect of urgent matters by way of an interdict, or *mandhamus,* for which purpose the Parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa, Bloemfontein.
	15. The Parties duties, rights and obligations in terms of this Agreement shall continue notwithstanding the pending finalisation of any dispute.
	16. This clause is a separate, indivisible agreement from the rest of this Agreement and shall, remain in effect even if this Agreement terminates, is nullified or cancelled for whatsoever reason or cause, unless provided otherwise in the Definitive Agreements.
1. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of South Africa.

1. SEVERABILITY
	1. **Severability**

Each of the provisions of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair in any way:

* + 1. the legality, validity or enforceability in that jurisdiction of the other provisions of this Agreement; or
		2. the legality, validity or enforceability in other jurisdictions of that provision or any other provision of this Agreement.
	1. **Illegality, Invalidity or Unenforceability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable, the Parties shall negotiate in good faith with a view to replacing the illegal, invalid or unenforceable provision with one or more provisions reasonably satisfactory to the Parties and differing from the replaced provisions as little as possible.

1. ENTIRE

This Agreement and all documents or s entered into, or to be entered into, pursuant to this Agreement constitute the whole and understanding between the Parties in relation to its subject matter.

1. NOTICES

**Details for Notices**

Any notice, instruction, consent or other document required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent by courier or by email to:

* 1. **For the Shareholder**:

Address: Bram Fisher Building, 5 De Villiers Street, Bloemfontein, 9300

Attention: City Manager/ Head of Corporate Services

Email: david.nkaiseng@mangaung.co.za

 tankiso.mea@mangaung.co.za

* 1. **For the Company**:

Address: Fort Street, Oranjesig Street, Bloemfontein

Attention: Chief Executive Director/Company Secretary

Email: ceo@centlec.co.za

thabo.malgas@centlec.co.za

* 1. Any communication and/or information to be given in connection with this Agreement shall be in writing in English and shall either be delivered by hand or by email form if so required by a Party:
		1. at its registered office, or such other address as it may notify to the other Party for such purpose;
		2. at any such address as a Party may in writing notify to the other Party for such purpose.
	2. A communication sent according to clause 23.3 shall be deemed to have been received:
		1. if delivered by hand, at the time of delivery;
		2. email or other electronic communication, at the time of completion of transmission by the sender;
		3. except that if a communication is received between 5:30 pm on a Business Day and 9:30 am on the next Business Day, it shall be deemed to have been received at 9:30 am on the second of such Business Days.
1. ANTI-CORRUPTION
	1. Each Party represents and warrants to the other Party that it and its respective Affiliates (including their respective Directors , officers, shareholders, employees and agents) have each conducted all of their respective activities in connection with the signature of this Agreement and the performance of any obligations under or in connection with this Agreement, in accordance with all applicable anti-corruption legislation, regulations and other requirements of national governmental agencies having jurisdiction over such activities, as may be implemented by the Regulatory Provisions.
	2. Each Party further represents and warrants that neither it nor its Affiliates (including their respective Directors , officers, shareholders, employees and agents) have paid, offered or promised to pay, or authorised directly or indirectly, the payment of any money or anything of value to any person (including any public official or employee) for the purpose of illegally or improperly inducing that person to take action or omit to take action in connection with the signature of this Agreement or the performance of any obligations under or in connection with this Agreement in order to secure an improper advantage or benefit.
2. GENERAL
	1. **Whole**
		1. This Agreement constitutes the whole of the between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this shall be binding on any of the Parties.
		2. This Agreement supersedes and replaces any and all others between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
	2. **Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

* 1. **No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

* 1. **No Waiver or Suspension of Rights**

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

* 1. **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

* 1. **Terms of Agreement**

Unless otherwise specifically stipulated in writing to the contrary, the terms of this Agreement shall supersede and prevail over any terms and conditions contained in any between the Parties.

1. SIGNATURE
	1. This Agreement is signed by the Parties on the dates and at the places indicated below.
	2. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same as at the date of signature of the Party last signing one of the counterparts.
	3. The persons signing this Agreement warrant their authority to do so.
	4. The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have his/her signature of this Agreement verified by a witness.

SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2020.

For and on behalf:

**MANGAUNG METROPOLITAN MUNICIPALITY**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2020.

For and on behalf of:

**CENTLEC (SOC) LTD**

|  |
| --- |
| Signature |
| Name of Signatory:  |
| Designation of Signatory: |