

SERVICE DELIVERY AGREEMENT

for the year 2020/2021

entered between

MANGAUNG METROPOLITAN 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)

and

CENTLEC (SOC) LIMITED

(a state-owned company incorporated in accordance with the company laws of the Republic of South Africa under registration number 2003/011612/07 and established as a Service Provider 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)

TABLE OF CONTENTS

NO.	DESCRIPTION	PAGE NO.
1.	DEFINITIONS AND INTERPRETATION	4
2.	INTRODUCTION.....	10
3.	APPOINTMENT	10
4.	SUPREMACY OF THIS AGREEMENT	10
5.	CESSION AND ASSIGNMENT OF APPOINTMENT.....	11
6.	GOOD FAITH AND INDEPENDENT CONTRACTING	11
7.	STATUS AND DURATION OF THIS AGREEMENT.....	11
8.	SERVICE AREA	12
9.	SERVICES AND SERVICE LEVELS.....	13
10.	TARIFF AND TARRIFF POLICY DETERMINATION.....	13
11.	PRINCIPAL OBJECTIVE OF THE SERVICE DELIVERY AGREEMENT AND LINK TO BUDGETING PROCESS.....	14
12.	STANDARDS AND CONDITIONS OF SERVICE.....	14
18.	NEW DEVELOPMENTS	20
19.	ASSETS AND RISK MANAGEMENT	21
20.	FINANCIAL AND REPORTING PROVISIONS.....	25
21.	TREASURY	27
22.	QUARTERLY AND ANNUAL REPORTS	27
23.	RESPONSIBILITIES OF PARTIES	29
24.	ASSIGNED MUNICIPAL RESPONSIBILITIES.....	31
25.	STEP-IN RIGHTS	31
26.	EXPERT DETERMINATION	31
27.	PROCUREMENT POLICY.....	32
28.	SOCIO ECONOMIC SERVICES.....	33
29.	HUMAN RESOURCES AND LABOUR RELATIONS	34
30.	MANAGEMENT OF COMMERCIAL CONTRACTS.....	34
31.	NERSA REQUIREMENTS	36
32.	ENVIRONMENT AND HUMAN HEALTH	36
33.	WARRANTIES	36
34.	INDEMNITIES.....	37
35.	CONFIDENTIALITY	39
36.	GOOD FAITH AND CO-OPERATION.....	40

37. TERMINATION	40
38. EFFECT OF NOTICE OF TERMINATION.....	42
39. BREACH.....	43
40. DISPUTE RESOLUTION	43
41. GOVERNING LAW	46
42. SEVERABILITY	46
43. ENTIRE AGREEMENT	47
44. NOTICES.....	47
45. ANTI-CORRUPTION.....	48
46. GENERAL.....	49
47. SIGNATURE	50
SCHEDULE A – SERVICES	52
SCHEDULE B – SERVICE PERFORMAMCE LEVELS.....	53
SCHEDULE C – ANNUAL BUDGET	54
SCHEDULE D - BUSINESS PLAN.....	55
SCHEDULE E - FINANCIAL PERFORMANCE TARGET FRAMEWORK.....	56

1. DEFINITIONS AND INTERPRETATION

NOW THEREFORE IT IS HEREBY AGREED as follows:

1.1. In this Agreement the following expressions have the following meanings:

- 1.1.1. **"Agreement"** means this Service Delivery Agreement together with any annexures and schedules hereto;
- 1.1.2. **"Affiliate"** means, in relation to any Party, that Party's subsidiary or holding entity or any subsidiary of such holding entity;
- 1.1.3. **"Annual Budget"** means the annual budget of the Service Provider approved in terms of clause 12 and in accordance with section 87 of the MFMA and attached as Schedule C;
- 1.1.4. **"Assets"** means all the assets, whether corporeal or incorporeal, of MMM used in connection with or in the conduct of Services comprising, but not limited to Plant, movable property and immovable property;
- 1.1.5. **"Board"** means the board of directors of the Service Provider as constituted from time to time, being the accounting authority and governing body of the Service Provider;
- 1.1.6. **"Business"** means the business conducted by the Service Provider being the supply of electricity in the Service Area;
- 1.1.7. **"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;
- 1.1.8. **"Business Plan"** means an annual multi-year business plan of the Service Provider containing details of how the Service Provider will conduct the Business which shall be in accordance with section 87(5)(d) of the MFMA, attached as Schedule D;
- 1.1.9. **"CEO"** means the Chief Executive Officer of the Service Provider appointed in terms of section 93J of the MSA;
- 1.1.10. **"Chairperson's Quarterly Meetings"** means a meeting convened and attended by the chairperson of the Board, the relevant municipal manager,

Service Provider's CEO, representatives from the governance department and line departments, which meetings are scheduled by MMM on a quarterly basis;

- 1.1.11. **"Code of Ethics"** means the Service Provider's code of ethics as developed by MMM from time to time;
- 1.1.12. **"Companies Act"** means the Companies Act 71 of 2008;
- 1.1.13. **"Competent Authority"** means any department in the national or provincial sphere of government exercising statutory powers in terms of local government, finance, environmental or resources legislation;
- 1.1.14. **"Constitution"** means the Constitution of the Republic of South Africa Act, Act 108 of 1996;
- 1.1.15. **"Council"** means the Metropolitan Council of MMM as defined in section 1 of the Structures Act;
- 1.1.16. **"Customer"** means a natural or juristic person who uses or benefits directly from the provision of the Services provided by the Service Provider;
- 1.1.17. **"Demarcation Act"** means the Local Government: Municipal Demarcation Act, No. 27 of 1998;
- 1.1.18. **"Distribution Licence"** means any distribution licence issued by NERSA to the Service Provider, to distribute and supply electricity, as amended;
- 1.1.19. **"Effective Date"** means the date on which this Agreement has been signed by the Parties and is approved by the Council;
- 1.1.20. **"Executive Mayor"** means the executive mayor of MMM, as elected in accordance with section 55 of the Structures Act;
- 1.1.21. **"Existing Service Delivery Agreement"** means the written service delivery agreement entered into between MMM and Tamarron Trading on or about 15 March 2004 in terms of which the Parties sought to ensure the sustainable provision of municipal services, including electricity provision to the Service Area, including all addendums, novation and replacement agreements thereto;

- 1.1.22. **"External Auditor"** means the Auditor-General as defined in section 1 of the Municipal Finance Management Act 56 of 2003;
- 1.1.23. **"Financial Year"** means the financial year of both MMM and Service Provider being a 12 (twelve) month period commencing on 1 July and ending on 30 June of the following year;
- 1.1.24. **"Generation Licence"** means the electricity generation licence issued by NERSA to the Service Provider;
- 1.1.25. **"IDP"** means MMM's integrated development plan adopted by the Council;
- 1.1.26. **"KPA"** means the key performance areas which is the explicit statement of the performance objective and outcome results that relate to major functional, operational, financial, technical or behavioural area of the role and accountability of the individual or entity which is being assessed;
- 1.1.27. **"KPI"** means the quarterly performance measures established by MMM which are in line with the priorities, objectives, indicators and targets contained in its IDP, against which the performance of the Service Provider shall be evaluated;
- 1.1.28. **"MAT Regulations"** means the Municipal Asset Transfer Regulations, 2003;
- 1.1.29. **"MFMA"** means the Local Government: Municipal Finance Management Act No. 56 of 2003 and its Regulations, as amended from time to time;
- 1.1.30. **"MMM"** means Mangaung Metropolitan Municipality, a statutory body, established in terms of the provisions of section 12 of the Structures Act;
- 1.1.31. **"MSA"** means the Local Government: Municipal Systems Act 32 of 2000, as amended;
- 1.1.32. **"MOI"** means the memorandum of incorporation of the Service Provider;
- 1.1.33. **"Municipal Manager"** means a person appointed in terms of section 54A of the MSA;
- 1.1.34. **"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;

- 1.1.35. "**NERSA**" means the national energy regulator of South Africa;
- 1.1.36. "**Parties**" means MMM and the Service Provider and "Party" means either one of them, as the context may require;
- 1.1.37. "**Plant**" means the vehicles, machinery, equipment and any other movable property necessary for the proper performance of the Services by, the Service Provider;
- 1.1.38. "**Records**" means the Service Provider'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;
- 1.1.39. "**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:
- 1.1.39.1. the MFMA;
 - 1.1.39.2. the MSA;
 - 1.1.39.3. the Structures Act; and
 - 1.1.39.4. the Constitution;
- 1.1.40. "**SDBIP**" means the approved service delivery and budget implementation plan for the current financial year;
- 1.1.41. "**Service Area**" means the geographical area for which the Distribution Licence and Generation Licence were issued to MMM and in respect of which the Service Provider is appointed to render the Services;
- 1.1.42. "**Service Levels**" means the level of service to be achieved by the Service Provider in providing the Services under this Agreement as more fully set out in clause 9 and Schedule B;

- 1.1.43. "**Service Provider**" means Centlec SOC Limited, a state-owned company incorporated in accordance with the company laws of the Republic of South Africa under registration number 2003/011612/07;
- 1.1.44. "**Services**" means the services rendered by the Service Provider set out in further detail in Schedule A;
- 1.1.45. "**Shareholder**" means Mangaung Metropolitan 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, or its successor-in-title from time to time, being the sole shareholder and parent municipality of Centlec;
- 1.1.46. "**Shareholder Compact**" means the shareholder compact agreement concluded by the Parties and approved by Council;
- 1.1.47. "**Signature Date**" means the date of signature of this Agreement by the last signing party;
- 1.1.48. "**South Africa**" means the Republic of South Africa; and
- 1.1.49. "**Structures Act**" means the Municipal Structures Act No. 117 of 1998.

1.2. Interpretation

- 1.2.1. 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.
- 1.2.2. 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.
- 1.2.3. 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.

- 1.2.4. 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.
- 1.2.5. 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.
- 1.2.6. 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.
- 1.2.7. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.
- 1.2.8. 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.
- 1.2.9. 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.
- 1.2.10. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "includes" and "including", followed by a specific example or examples, shall not be construed as limiting the meaning of the general wording preceding it.
- 1.2.11. Any reference in this to "this Agreement" or any other or document, shall be construed as a reference to this Agreement, or such other or document, as amended, varied, novated or supplemented from time to time.
- 1.2.12. 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.

2. INTRODUCTION

- 2.1. MMM 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.
- 2.2. MMM has elected to deliver the Services through the Service Provider established by it in terms of section 76 (b) of the MSA, and through this Agreement, which sets out the framework within which the Service Provider shall render the Services without detracting from the accountability of MMM under its constitutional mandate.
- 2.3. The Service Provider is incorporated in terms of the Companies Act and wishes to enter into the Agreement with MMM to provide the Services on behalf of MMM in the Service Area.
- 2.4. Section 93B of the MSA requires MMM to exercise sole control of its Service Provider by ensuring the establishment of annual performance objectives, and the performance of the Service Provider's against the agreed performance objectives and indicators.
- 2.5. MMM, as the parent municipality wishes to conclude this Agreement with the Service Provider, to regulate the relationship between the two Parties and express the roles and functions required to achieve their respective objectives, in a structured manner.

3. APPOINTMENT

MMM hereby appoints the Service Provider, on a non-exclusive basis, as its service provider to render the Services, which appointment the Service Provider hereby accepts, subject to the terms and conditions set out herein.

4. SUPREMACY OF THIS AGREEMENT

- 4.1. In the event that any provision of any other agreement entered into between MMM and the Service Provider or any term in the Business Plan and pertaining to the subject-matter of this Agreement conflicts with the provisions of this Agreement, the provisions of this Agreement shall prevail unless the other agreement specifically states that it is the intention of the Parties to amend the terms of this Agreement.

- 4.2. For the avoidance of doubt, the Existing Service Delivery Agreement is hereby, cancelled and shall have no force or effect following the Effective Date.

5. CESSATION AND ASSIGNMENT OF APPOINTMENT

- 5.1. The Service Provider acknowledges that the appointment conferred upon it in terms of clause 3, may not be ceded or assigned whether temporarily or otherwise without the prior written consent of MMM as approved by Council.

6. GOOD FAITH AND INDEPENDENT CONTRACTING

- 6.1. Both Parties shall always show good faith towards each other for the duration of this Agreement, which includes:

- 6.1.1. protecting each other's interests as far as reasonably possible;
- 6.1.2. disclosing any information which may come to a party's knowledge regarding a Customer's dissatisfaction with the performance of the other Party;
- 6.1.3. not acting in any way which could be derogatory to the other Party or which could prejudice the other Party's reputation.

- 6.2. Notwithstanding the aforesaid, MMM and the Service Provider shall always be independent contracting Parties, and neither shall -

- 6.2.1. be the partner of the other;
- 6.2.2. be the agent or representative of the other;
- 6.2.3. be the employee of the other;
- 6.2.4. have the authority to bind the other Party by any representations, statements, warranties or agreements in any manner whatsoever,
- 6.2.5. unless specifically so provided in this Agreement or otherwise in writing.

7. STATUS AND DURATION OF THIS AGREEMENT

- 7.1. This Agreement shall commence on the Effective Date and shall subject to clause 37 and 37.2.2.7, endure indefinitely, unless superseded by national legislation or a resolution of the Council.

- 7.2. Subject to 7.4, this Agreement shall be reviewed annually in line with the period of the IDP in terms of the provisions set out in this Agreement or until it is terminated by MMM pursuant to section 93B(c) of the Systems Act.
- 7.3. This Agreement shall be reviewed and amended from time to time to ensure that it complies with the provisions of the latest IDP.
- 7.4. The annexures to this Agreement shall be reviewed and agreed to annually by both the Board of the Service Provider and MMM as they form the basis for the performance review of the Service Provider.

8. SERVICE AREA

- 8.1. MMM shall render the Service Provider all reasonable assistance in maintaining a Distribution licence and a Generation licence from NERSA for electricity provision in the Service Area.
- 8.2. The other Service Area for purposes of this Agreement shall mean the municipal area of the other Free State Municipalities, as determined in terms of the provisions of the Demarcation Act, from time to time, of which the Service Provider has a separate agreement for the provision of Generation and Licence service.
- 8.3. The Service Provider shall obtain approval of Council prior to establishing, providing or undertaking services in any municipal area outside the MMM area.
- 8.4. MMM shall render an oversight role towards the other Service Area, in line with its responsibilities as a shareholder of the Service Provider.
- 8.5. If the municipal boundaries of MMM are extended under the Demarcation Act or any other law, and MMM elects to expand the Service Area, the procedure shall be as follows:
 - 8.5.1. MMM shall forthwith, following the publication of a redetermination of its municipal boundaries in the Free State Provincial Gazette under the Demarcation Act or any other law, indicate whether it requires the Service Provider to provide Services within the extended area;
 - 8.5.2. if the Service Provider is required by MMM to provide the Services in the extended area, the Service Provider shall make provision of the Services to the extended Service Area; and

- 8.5.3. if the municipal boundaries of MMM are reduced under the Demarcation Act or any other law, then following the publication of a redetermination of MMM's municipal boundaries in the Free State Provincial Gazette under the Demarcation Act or any other law the service area shall be reduced to coincide with the new boundaries of MMM.

9. SERVICES AND SERVICE LEVELS

- 9.1. The Services provided or to be provided by the Service Provider from the Effective Date in accordance with the provisions of this Agreement, are described in Schedule A.
- 9.2. The Services are described in general terms in Schedule A but will on an annual basis be specified in more detail in the SDBIP and Service Provider's annual Business Plan as contemplated in this Agreement.
- 9.3. The scope of the Services may be changed by agreement between the Parties pursuant to the business planning and budgeting process as referred to in this Agreement.
- 9.4. The Service Levels are attached hereto as Schedule B and shall be reviewed annually prior to the commencement of each Financial Year in line with the budget approval process.

10. TARIFF AND TARRIFF POLICY DETERMINATION

- 10.1. The Council shall by way of passing a resolution determine the tariffs and tariff policy for the supply of Services to Customers from time to time, subject to the provisions of this clause 10.
- 10.2. The Service Provider shall only be permitted to charge Customers at such tariffs as may be sanctioned by MMM and approved by NERSA from time to time in accordance with the provisions of this clause 10. The tariffs and any amendments thereto shall further comply with MMM's tariff policy from time to time, subject to the provisions of national legislation and the requirements of NERSA.
- 10.3. Should the Service Provider wish to table any amendments to tariffs with NERSA or apply for the approval of any new tariffs, it shall, at least by no later than 28 February of each year submit such proposal to MMM for sanction and MMM shall at its discretion sanction such tariffs within a period of (30) days of the request thereto, failing which it

shall timeously provide the Service Provider with reasons as to why such tariffs were not approved.

10.4. The Service Provider shall only be entitled to submit such tariff proposals to NERSA as have been sanctioned by MMM pursuant to clause 10.3. All tariffs will be prepared in accordance with the requirements and guidelines of NERSA from time to time.

10.5. MMM and the Service Provider acknowledge that the Service Provider shall only be entitled to impose such tariffs as are finally approved by NERSA.

11. PRINCIPAL OBJECTIVE OF THE SERVICE DELIVERY AGREEMENT AND LINK TO BUDGETING PROCESS

11.1. This Agreement is envisaged to promote a framework within which a detailed service delivery plan in relation to the Services should be developed and implemented by the Service Provider in a manner that is consistent with, and that will play a part in, giving effect to MMM's strategic planning process.

11.2. The municipal budgeting process is the mechanism by which the Service Provider translates into practice the strategic objectives of MMM in a manner that is not only consistent with the long-term strategic objectives, the IDP in respect of medium-term strategic objectives, the SDBIP, but also in a manner which is consistent with the availability, prudent and sustainable use of available resources.

11.3. As an outcome of the budgeting process, the Business Plan of the Service Provider identifies the key service delivery objectives of the Service Provider together with the resources allocated to the achievement of such objectives. It also identifies the KPAs and KPIs that are used in evaluating the extent to which the Service Provider and its management have achieved the service delivery objectives determined for the Service Provider and enables evaluation of management performance in the context of appropriate remuneration.

12. STANDARDS AND CONDITIONS OF SERVICE

12.1. The Service Provider shall provide the Services:

12.1.1. at the Service Levels set out in Schedule B;

12.1.2. in accordance with best engineering practice; and

12.1.3. in compliance with all directives, time schedules and budgets agreed with MMM.

12.2. It is recorded that Service Levels may vary within the Service Area as a result of differences in the physical and infrastructural attributes of each area, provided that the Service Provider shall:

12.2.1. comply with the Regulatory Provisions in the delivery of the Services;

12.2.2. comply with the socio-economic development plan prepared in terms of clause 28; and

12.2.3. seek the approval of MMM in accordance with clause 12.4 if it requires Service Levels to be lowered.

12.3. The Service Provider may not, without the express authorisation of MMM in writing, restrict or discontinue the provision of the Services, except for a limited period in order to undertake maintenance including extraordinary maintenance, subject to advance notification to the affected Customers.

12.4. Any amendment to the Service Levels shall be reduced to writing and signed by both Parties, and the amendment shall be incorporated into Schedule B of this Agreement, respectively.

13. ANNUAL BUDGETING PROCESS AND BUSINESS PLAN

13.1. The Board of the Service Provider shall ensure for its Financial Year that a budget is prepared and submitted to MMM and finalised in accordance with the requirements of section 87 of the MFMA and the Municipal Budget and Reporting Regulations.

13.2. The Service Provider's budget shall include a multi-year Business Plan which shall, *inter alia*:

13.2.1. serve the purpose of providing a vehicle through which the obligations of the Parties with regard to service delivery can be articulated and agreed upon on an annual basis;

13.2.2. each Business Plan must define the outputs to be achieved by the Service Provider in each year, the budget required to achieve the outputs, and such other issues as MMM shall request the Service Provider to incorporate in the

Business Plan, including a range of other critical issues and supporting information describing the business and the strategies to be adopted to ensure service delivery on the agreed outputs;

- 13.2.3. set key financial and non-financial performance objectives and measurement criteria which shall have been agreed between the Service Provider and MMM.

13.3. The Annual Budget shall:

- 13.3.1. be within any limits determined by MMM, including any limits on tariffs, revenue, expenditure and borrowing;
- 13.3.2. comply and be consistent with MMM's budget and the IDP;
- 13.3.3. be consistent with this Agreement;
- 13.3.4. reflect actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates; and
- 13.3.5. otherwise comply with the requirements of section 17(1) and (2) of the MFMA to the extent that such requirements can reasonably be applied to the Service Provider.

13.4. The Business Plan shall also:

- 13.4.1. as far as possible be in accordance with a template submitted to the Service Provider from time to time by MMM at commencement of the annual budgeting process and shall in detail set out the outcomes to be achieved by the Service Provider in the following year, commencing on 1st July. In addition, each Business Plan shall include indicative inputs and outputs and financial models for the subsequent 3 (three) years;
- 13.4.2. be approved by the Board of the Service Provider after it has been finally negotiated and settled as per the provisions of section 87 of the MFMA; and
- 13.4.3. be submitted to MMM in terms of the provisions of the MFMA including any regulations framed hereunder or on or before a date determined by MMM

from time to time, provided that such date is not later than the date contemplated under the MFMA.

13.5. Any projected allocation to the Service Provider by MMM must be provided for in the annual budget of MMM, and to the extent that so is not provided, the Service Provider's budget and where applicable, the Business Plan, must be adjusted in accordance with the provisions of section 87(6) of the MFMA.

13.6. The Service Provider shall incur expenditure only in accordance with its approved budget, subject to any adjustments effected on the basis contemplated in the MFMA.

14. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW

14.1. Taking into account MMM's key service delivery imperatives and the resources available for achieving those objectives, the Service Provider's Business Plan shall set out the key annual financial and non-financial performance objectives of the Service Provider.

14.2. Pursuant to the determination of the key annual performance objectives for the year to which the relevant Business Plan relates, the Service Provider shall, by agreement with MMM, also establish the relevant KPAs and KPIs for the Service Provider in respect of such period, for inclusion in the Service Provider's Business Plan.

14.3. KPIs shall be designed to indicate to the Parties, Customers and the general public, the measure of success achieved by the Service Provider in the provision of the Services.

14.4. The service objectives agreed to from time to time between the Service Provider and MMM represent a critical measure of service delivery, and as a substantive obligation pursuant to this Agreement. The Service Provider undertakes at all times to perform the Services in a professional manner that is in compliance with the KPA and KPIs established pursuant to the Business Plan, as agreed annually and where applicable, amended as provided for in terms of this Agreement or by municipal legislation. In this regard, the Service Provider shall at all times exercise proper skill, care and diligence and comply with all directives, time schedules and budgets as agreed with MMM pursuant to the Business Plan.

14.5. The Service Provider shall report on its performance:

- 14.5.1. annually, as part of its annual reporting process, against the agreed KPAs and KPIs in terms of the annual reports and annual financial statements as per clause 22;
- 14.5.2. six months after commencement of the Financial Year on the Service Levels required in terms of this Agreement; and
- 14.5.3. quarterly report on its activities during the quarter under review to MMM in terms of the reporting requirements under clause 20.

15. SERVICE DELIVERY AGREEMENT PERFORMANCE MANAGEMENT COMMITTEE

- 15.1. The Parties shall within 21 Business Day from the Signature Date, set-up a management committee for the purpose of monitoring the performance and implementation of this Service Delivery Agreement, the decisions on the way forward for significant matters and the coordination on work performed by each Party.
- 15.2. The members of the management committee shall be appointed by MMM and shall comprise at least of the City Municipal Manager who shall be chairperson, MMM's Chief Financial Officer, the Service Provider's Chief Executive Officer, Chief Financial Officer, Company Secretary, Head of Directorate Corporate Services, General Manager for Integrated Development Plan and General Manager for Legal Services unless agreed otherwise by the members of the management committee, the management committee shall convene on a monthly basis to discuss the progress and performance of the Service Delivery Agreement as contemplated in herein and any other related business. The members of the management committee may participate in meetings by means of a conference telephone, video conferencing or similar communications equipment allowing persons participating in the meeting to hear each other at the same time.
- 15.3. All decisions and resolutions taken at each meeting shall be by unanimous vote. In the event of any deadlock, the Parties shall refer the dispute to the Executive Mayor for determination.

16. PERFORMANCE MANAGEMENT

- 16.1. It is recorded that the NERSA acts as the sole industry regulator in respect of the Services. The Parties accordingly agree that the Services are to be rendered in compliance with the requirements of the NERSA as stipulated in the Distribution

Licence and Generation Licence conditions (if any), in addition to the target set in the business plan.

- 16.2. In accordance with the MSA, any other applicable legislation and the stipulations of NERSA in respect of the Distribution Licence and Generation Licence from time to time, the Service Levels shall be subject to an annual review by the Parties in co-operation with, and in compliance with the requirements of NERSA, in accordance with the provisions of this clause 15.
- 16.3. As an external functionary of MMM, the Service Provider is required to perform its activities for the purpose it has been mandated by MMM in terms of the scope of Service described in this Agreement, Shareholder Compact, and in accordance with the MSA and other Applicable Law. To that extent necessary, MMM will, as the parent municipality, keep the Service Provider informed as to essence of its mandate and performance objectives and do all that is reasonably necessary and required to be done to keep it informed of its functions and in particular the required performance, functions and powers of MMM.
- 16.4. At all times and without restriction, the Service Provider will have access to MMM and its departments to enquire and access information with regards to any activity and/or competency for purposes of being and remaining compliant in terms of this Agreement and the relevant legislation.
- 16.5. A specific function of the Service Provider will be that of a manager, which includes complete management of the relevant Services. The annual Business Plan, as approved by Council, shall contain the KPA's and KPI's with which the Service Provider must comply in respect of the Services.

17. SERVITUDES

- 17.1. The Service Provider, in rendering the Services, is reliant on the continued use of certain servitudes, rights of way and similar rights over or in respect of the property of third parties, whether registered or otherwise, in favour of MMM.
- 17.2. MMM shall, for the duration of this Agreement, allow the Service Provider continued use of these servitudes and rights of way at no cost to the Service Provider.
- 17.3. MMM, or its delegated or appointed representative, shall at the reasonable request of and in consultation with the Service Provider, take such steps as may be necessary

to acquire and register such further servitudes as may be reasonably necessary for the effective performance by the Service Provider of its obligations under this Agreement. The Service Provider shall, on demand, pay to MMM the costs of registration of such further servitudes in favour of MMM.

- 17.4. To the extent that servitudes have not been registered, by virtue of the immovable property concerned being held by MMM, MMM shall ensure that, on registration of transfer of such property to third parties, the rights of MMM and through it the Service Provider, are legally protected and MMM shall ensure registration of such rights on or prior to transfer, at the cost of MMM or the third party purchaser.
- 17.5. Notwithstanding the provisions of 16.2 above, the Service Provider shall be responsible for all reticulation costs including maintenance of relevant area of excavation.
- 17.6. All wayleave applications shall be made through the engineering directorate of MMM which shall be a central point of considering and processing wayleave applications.

18. NEW DEVELOPMENTS

- 18.1. It is recorded that the Service Provider may, in respect of new developments, including:

- 18.1.1. the establishment of any township;
- 18.1.2. the amendment of any town planning scheme; and
- 18.1.3. any property development which may affect the Services to be rendered by the Service Provider,

(collectively, "**New Development**"), be required to outlay capital expenditure for the provision or upgrading of the Services in respect of such developments.

- 18.2. In the event that any bulk services contributions are recovered by MMM in respect of any New Developments, sub-divisions, or re-zonings, the direct cost for the electricity service provision shall be accounted for in accordance with clause 23 of this Agreement.
- 18.3. The Service Provider shall, at the request of MMM, provide reasonable technical assistance to MMM in making any representations to any tribunal in respect of any application relating to New Developments.

- 18.4. If MMM subsidises any New Developments or the municipal services to be rendered in respect thereof, such New Developments shall be treated as socio economic services as contemplated in clause 28.

19. ASSETS AND RISK MANAGEMENT

19.1. Maintenance and availability of the assets

- 19.1.1. It is recorded that this Agreement has been entered into on the understanding that the Assets or Council business will revert to MMM on termination as set out in clause 37. Accordingly, and pursuant to the asset due diligence, the Service Provider undertakes to maintain and preserve the Assets in their condition on the effective date, fair wear and tear excepted.
- 19.1.2. The Service Provider undertakes not to sell, pledge, dispose, hypothecate or in any other manner alienate a material Asset, without the written consent of MMM, which consent shall not be unreasonably withheld.
- 19.1.3. MMM undertakes to grant the Service Provider access to all the immovable properties registered in its name, and to procure that such access is granted by third parties holding or using MMM's immovable properties. Such access shall be granted –
- 19.1.3.1. in furtherance of the aims and objects of this Agreement;
 - 19.1.3.2. to enable the Service Provider to deliver the Services in terms hereof; and
 - 19.1.3.3. at no cost to the Service Provider.

19.2. Duty to maintain Plant

- 19.2.1. The Service Provider shall always be responsible for providing all Plant necessary for the proper performance of the Services provided that during the financial year period, the above responsibility shall be subject to the budget allocation agreed with MMM.
- 19.2.2. Save for the Assets owned by MMM and in the name of MMM as of the Effective Date, all Plant employed by the Service Provider in the performance of the Services at any time must either be owned by MMM, the Service

Provider or hired by the Service Provider pursuant to a contract of hire, which contract must contain a clause permitting the Service Provider to assign the benefit of the contract to MMM.

19.2.3. The Service Provider shall always be fully responsible for the payment of all licensing fees, taxes and insurances required in connection with or arising out of the possession or use of all Plant employed in the performance of the Services.

19.2.4. The Service Provider is required at all times to keep all Plant employed in the performance of the Services maintained and in good and serviceable repair and in such condition as is commensurate with the proper performance by the Service Provider of its obligations under this Agreement, and maintain the Plant in compliance with the regulatory provisions.

19.2.5. All plant employed by the Service Provider shall be of types suitable for its intended purpose and shall be fitted with all guards and safety devices originally fitted by the manufacturer.

19.2.6. Within 12 (twelve) months of the Effective Date, the Service Provider shall upon the written request of MMM provide MMM with a complete list of all Plant which list shall describe the make, type, unique identifying marks and condition of the Plant, as appropriate. This list must be amended on an annual basis and must be made available for inspection by MMM from time to time.

19.2.7. The Service Provider shall always permit MMM access to all Plant employed by the Service Provider. MMM shall be entitled to serve upon the Service Provider a notice in writing requiring the Service Provider to put any item of Plant into such condition as is required by clauses 19.2.3 and 19.2.4 above, and upon receipt of such a notice the Service Provider is required to cause all works to be carried out to comply with the notice. In the event of the Service Provider failing to carry out such works, MMM shall be at liberty to have such works carried out by such persons as they may choose and the Service Provider shall pay to MMM such sum as MMM shall certify to have been the cost of executing such work.

19.2.8. The Service Provider shall maintain records, and on the written request of MMM shall provide MMM with copies of all service, inspection and safety records of all Plant employed by the Service Provider. Such records shall

include copies of all formal certificates required under the National Road Traffic Act 93 of 1996 and any similar applicable legislation.

19.2.9. The Service Provider shall cause all Plant to bear the corporate colours, words, devices and logo of the Service Provider.

19.3. Risk management

19.3.1. It shall be the responsibility of the Service Provider to arrange for all Assets, including infrastructure assets in terms of 18.4.7, to be comprehensively insured within 30 (thirty) days from the date of signing this Agreement, and to similarly comprehensively insure any asset 30 (thirty) days from the date of delivery or transfer by MMM to the Service Provider of the Asset.

19.3.2. The Service Provider shall obtain public liability insurance against delictual, contractual and all other claims which may be brought against the Service Provider or MMM arising from or in connection with this Agreement.

19.3.3. The public liability insurer and the terms of the insurance policy referred to in clause 19.3.2 above shall be subject to approval by MMM.

19.3.4. Upon obtaining the insurance required in clause 19.3.2 and upon each renewal date of the relevant policy, the Service Provider shall provide MMM with a certificate from its insurers or brokers confirming that the Service Provider's insurance policies comply with clause 19.3.2 and the Service Provider shall provide to MMM on request copies of all insurance policies, cover notes, premiums, receipts and other documents necessary to establish compliance with clause 19.3.2.

19.3.5. MMM shall be entitled to notify the Service Provider in writing that, in its opinion, the insurance policy obtained by the Service Provider is insufficient for the purposes of clause 19.3.2 and requiring the Service Provider to obtain adequate insurance for this purpose. Upon receipt of such notice, the Service Provider shall obtain such insurance as MMM requires and in default thereof MMM may itself obtain such insurance whereupon the Service Provider shall pay to MMM the sum certified by MMM as being the cost to MMM of obtaining such insurance.

19.4. Asset management plan

19.4.1. The Service Provider shall every 3 (three) years prepare an asset management plan for submission to MMM.

19.4.2. The asset management plan shall conform to a format prescribed by MMM, after consultation with the Service Provider, and in the absence of such a prescription by MMM, shall conform to a format appropriate for conveying the information set out in clause 19.4.3.

19.4.3. The asset management plan shall include the following:

19.4.3.1. a description of the Assets in appropriate categories;

19.4.3.2. an assessment of the replacement value of the Assets; and

19.4.3.3. an assessment of the condition of the Assets.

19.4.4. The method to be used by the Service Provider in preparing the asset management plan shall be determined by the Service Provider in consultation with MMM and shall involve the adoption of a sampling methodology.

19.4.5. If required by MMM, the asset management plan shall be reviewed by an expert appointed in accordance with the provisions of clause 26.2, which expert shall not have the further powers set out in clauses 26.3 and 26.4. The expert shall test the reasonableness and accuracy of the asset management plan and comment thereon to the executive mayor and the executive committee or their delegate.

19.4.6. The interval for preparation of the asset management plan may be adjusted from time to time as agreed by the Parties.

19.4.7. Immediately and upon approval of this Agreement by Council, the following infrastructure assets remain under ownership of MMM and are made available for use and management during and for the useful life by the Service Provider on behalf of MMM:

19.4.7.1. Streetlights;

19.4.7.2. Reticulation network;

19.4.7.3. Pylons;

19.4.7.4. High Mast;

19.4.7.5. Power generation plants;

19.4.7.6. Transformers;

19.4.7.7. Information Technology Networks and systems;

19.4.7.8. Immovable Property; and

19.4.7.9. Buildings and land,

collectively, (the "**Infrastructure Assets**").

19.4.8. Information data, data centre, intellectual property and any future development or new purchases of Infrastructure Assets will remain that of MMM.

19.4.9. MMM has a right of shared and complimentary use of the infrastructure assets for furtherance of other functions of MMM to the extent approved by Council, agreed between the Parties and/or on request by the Executive Mayor. The manner and other basis for shared use and the costs thereof shall be agreed from time to time per shared use in the Service Delivery Agreement Performance Technical Committee provided for in terms of clause 15 of this Agreement.

19.4.10. For the use of all infrastructure assets, the Service Provider will pay a nominal compensation of R [●] per annum. The nominal compensation is payable in four equal instalments on the last day of each quarter of the year and shall form part of the revenue contributions to MMM in terms of schedule E.

20. FINANCIAL AND REPORTING PROVISIONS

20.1. Budgetary process and setting of treasury policy

The Service Provider shall participate in MMM's annual strategic planning process and participate and provide input in respect of MMM's -

20.1.1. financial plan;

20.1.2. medium term budget framework;

20.1.3. annual budget;

20.1.4. such other matters as may affect the Service Provider or the performance by it of the Services under this Agreement; and

20.1.5. develop its budget within the budget parameters provided by MMM.

20.2. Financial risk management

20.2.1. It is recorded that MMM has a statutory obligation under the municipal finance legislation to ensure the financial sustainability of the Service Provider as a municipal entity, including an obligation to report on its financial viability to the Auditor General.

20.2.2. It is further recorded that to enable MMM to discharge its statutory obligation referred to in clause 20.2.1 above, MMM has established an audit and risk committee ("**Risk Committee**") which makes financial risk management decisions with the participation of all the municipal entities under MMM's ownership control.

20.2.3. The Service Provider accordingly undertakes to:

20.2.3.1. co-operate and comply with determinations of the Risk Committee;

20.2.3.2. co-operate on treasury matters, including participating in its capacity as a member of the Risk Committee in MMM's annual strategic process, and shall ensure that its representative has the necessary delegated authorities to act for and on behalf of The Service Provider in decision making; and

20.2.3.3. comply at all times with the requirements of MMM's treasury policy and control manual, as far as it relates to:

20.2.3.3.1. asset and liability management;

20.2.3.3.2. financial risk management; and

20.2.3.3.3. physical risk management.

21. TREASURY

21.1. The centralised treasury functions to be performed by MMM include -

- 21.1.1. consolidation and evaluation of cash forecasts;
- 21.1.2. monitoring actual cash movements;
- 21.1.3. facilitation and administration of the opening and closing of bank accounts;
- 21.1.4. negotiation of loans and project finance agreements on the Service Provider's behalf, to the extent that the Service Provider requires this service;
- 21.1.5. establishment of procedures to control banking and bank accounts structures;
- 21.1.6. effective and efficient control of cash to meet the Service Provider's overall goals and financing needs;
- 21.1.7. definition of a format for cash balances and cash flow forecasts reporting; and
- 21.1.8. definition and monitoring of key performance indicators for cash flow management.

21.2. MMM shall provide the Service Provider with the following information -

- 21.2.1. monthly cash flow to budget reports;
- 21.2.2. investments and loans reports;
- 21.2.3. daily cash and bank transaction reports; and
- 21.2.4. regular reports on variances from projections, promptly upon MMM establishing any variances.

22. QUARTERLY AND ANNUAL REPORTS

22.1. Duty to prepare quarterly reports

22.1.1. The CEO of the Service Provider shall, within 30 (thirty) days of the end of each quarter, prepare and submit to MMM a quarterly performance report for the Service Provider as at the end of each quarter, reflecting:

- 22.1.1.1. its financial performance in rendering the Services;

22.1.1.2. its achievement of agreed Service Levels;

22.1.1.3. any special circumstances and factors that should be taken into account in analysing its performance; and

22.1.1.4. any measures to be taken by the Service Provider to improve its performance.

22.1.2. The CEO of the Service Provider shall provide MMM with such additional information regarding its operations, related to the provision of Services as MMM may reasonably require.

22.2. Duty to prepare annual reports

22.2.1. The CEO of the Service Provider shall in accordance with the provisions of the municipal finance legislation:

22.2.1.1. prepare financial statements for each Financial Year; and

22.2.1.2. submit such statements to the internal auditors for auditing, MMM and the auditor general.

22.2.2. In addition to any requirement imposed on the CEO of the Service Provider in terms of the Regulatory Provision, he shall in preparing financial statements also reflect:

22.2.2.1. a comparison with financial performance in the previous financial year;

22.2.2.2. the achievement of agreed Service Levels;

22.2.2.3. any special circumstances and factors that should be taken into account in analysing the Service Provider's performance;

22.2.2.4. any measures that will be taken by the Service Provider to improve its performance; and

22.2.2.5. a statement of litigation and other risks, including environmental risks, insurance gaps or claims disputes, and changes in legislation that pose risks to the Service Provider.

22.2.3. In addition to the preparation of financial statements, the board of directors of the Service Provider shall approve a statement reflecting:

22.2.3.1. the capital required for the provision of the Services in the next financial year;

22.2.3.2. how the capital will be raised; and

22.2.3.3. if capital cannot be raised a recommendation designed, so far as possible, to ensure the provision of the Services.

22.2.4. In relation to labour relations, the board of directors of the Service Provider shall approve a report reflecting for each Financial Year:

22.2.4.1. the number and nature of disputes with unions;

22.2.4.2. the number and nature of agreements with unions;

22.2.4.3. the remuneration packages of senior personnel and succession planning;

22.2.4.4. the status of employee benefit funds and other employee-related liabilities;

22.2.4.5. planned wage increase;

22.2.4.6. parity plan; and

22.2.4.7. any employee expansion or retrenchment plans.

22.2.5. In relation to affirmative procurement, the board of directors of the Service Provider shall approve a report indicating the extent of the Service Provider's achievement of the defined annual targets set out in its affirmative procurement policy prescribed in clause 27.

23. RESPONSIBILITIES OF PARTIES

23.1. The Service Provider shall:

23.1.1. adhere to the principles of transparency and accountability in its relations with MMM;

- 23.1.2. ensure that the Assets, as of the Effective Date, are used effectively, efficiently and economically;
 - 23.1.3. ensure that complete and accurate books and records of Service Provider's financial affairs are kept;
 - 23.1.4. ensure prompt payment of quarterly financial contributions to MMM in accordance with targets set out in Schedule E;
 - 23.1.5. ensure full compliance with the Shareholder Compact and participation in relevant forums and structures established by MMM;
 - 23.1.6. ensure that irregular, fruitless and wasteful expenditure and other losses are prevented;
 - 23.1.7. promptly report to Council on any official of the Service Provider who has allegedly committed an act of financial misconduct or misconduct in any form which may reasonably prejudice Service Provider's financial affairs and/or its reputation; and
 - 23.1.8. promptly remit quarterly contribution payments to MMM on the date as identified on schedule E.
- 23.2. MMM shall:
- 23.2.1. monitor the service delivery and financial performance of Service Provider;
 - 23.2.2. take all reasonable steps to ensure that it has complied with all Regulatory Provisions applicable;
 - 23.2.3. take all reasonable steps to ensure that MMM performs its Constitutional and statutory functions within the limits of MMM's approved budget in the implementation of the service delivery agreement;
 - 23.2.4. have full viewing, access and step-in rights to all the Service Provider's information and financial data, banking accounts and take any steps necessary to ensure compliance with the Municipal Finance Management Act; and
 - 23.2.5. exercise its step-in rights to the Service Provider's bank account to defray any contribution amount payable by the Service Provider in accordance with

Schedule E if the Service Provider is in default for a period exceeding 6 months.

24. ASSIGNED MUNICIPAL RESPONSIBILITIES

In accordance with section 81(2) of the MSA, the following responsibilities are assigned to the Service Provider:

- 24.1. developing and implementing service delivery plans within the framework of the IDP of MMM;
- 24.2. the operational planning, management and provision of the electricity on behalf of MMM;
- 24.3. working together with the Executive Mayor, undertaking social and economic development activities that are directly related to the provision of electricity services;
- 24.4. customer management;
- 24.5. managing own accounting, financial management, budgeting in accordance with 19), investment (subject to compliance with provisions of Schedule E on surpluses) and borrowing activities within a framework of transparency, accountability, reporting and financial control, protocols determined by MMM;
- 24.6. collection of service fees to defray own approved budget expenditure in accordance with Schedule E from users of electricity services in accordance with tariff and credit control policies. The Service Provider agrees to the consolidation of municipal services between the MMM and Service Provider payment accounts for purposes of credit control.

25. STEP-IN RIGHTS

The MMM shall have and exercise step in rights in the event of one or more of the circumstances outlined in the Shareholder Compact.

26. EXPERT DETERMINATION

- 26.1. Where any dispute arises regarding the determination of a value or the net asset value of the Service Provider, the provisions of this clause 24 shall apply.

26.2. The dispute shall be referred to an expert who shall be, if the matter in dispute is principally: -

26.2.1. a technical matter, a practising engineer with electrical engineering expertise of at least 10 (ten) year's standing appointed by the Chairperson/President for the time being of the Engineering Council of South Africa:

26.2.1.1. an accounting matter, a practising chartered accountant of Bloemfontein of at least 10 (ten) years' standing appointed by executive president for the time being of the South African Institute of Chartered Accountants; or

26.2.1.2. a legal matter, a practising advocate or attorney of Bloemfontein of at least 10 (ten) years' standing appointed by the Chairperson for the time being of the provincial Legal Practice Council - Free State (or its successor).

26.3. The expert, who shall not act as an arbitrator, shall have the fullest and freest discretion regarding the proceedings, save where any clause of this Agreement confines the discretion of the expert.

26.4. The determination of the expert shall be final and binding on the Parties, save that if any determination is manifestly unjust, and if the court determines what a just and equitable valuation would be, the Parties shall be bound by such a modified valuation.

26.5. The expert shall use his best endeavours to provide his determination within a reasonable period but should not exceed a period of 21 (twenty-one) days.

26.6. The expert shall determine the liability for his charges.

26.7. The Parties shall implement the determination of the expert within 14 (fourteen) days from the date the expert notifies the Parties of his determination.

27. PROCUREMENT POLICY

27.1. The Service Provider shall develop and implement an employment equity procurement policy in accordance with national government policy, procurement legislation and the MMM procurement policy.

27.2. The Service Provider's affirmative procurement policy shall include, but shall not be limited to, the following issues:

27.2.1. a policy on black economic empowerment;

27.2.2. a policy on small micro and medium enterprise development;

27.2.3. a policy on the empowerment of the disabled; and

27.2.4. clearly defined annual targets to be achieved by the Service Provider and reported upon as part of the annual report prescribed in terms of 22.2.5 above.

27.3. The Service Provider may participate in an e-procurement system to be developed by MMM and shall within 6 (six) months of the implementation by MMM of such a system, negotiate in good faith a service-level agreement with MMM in terms of which MMM shall provide the Service Provider with transversal procurement services for certain transversal demand items.

28. SOCIO ECONOMIC SERVICES

28.1. The Service Provider shall prepare and submit to MMM for approval a broad socio-economic development plan in the Business Plan, which shall:

28.1.1. be prepared by the Service Provider after consultation with and having due regard to the needs of the local community and views of the user forum;

28.1.2. include proposals regarding appropriate Service Levels for the poor and disadvantaged sections of the local community unable to afford electricity; and

28.1.3. endeavour to achieve an appropriate standard over time in the provision of the Services throughout the Service Area and in the interests of the local community.

28.2. MMM shall, in order to subsidise such services, reimburse the Service Provider in accordance with the approved Business Plan.

28.3. For the sake of clarity, it is recorded that the levels of service required of the Service Provider in respect of socio-economic services shall be those set out in the Business Plan and this Agreement. Failure to perform the socio-economic services in terms of

the business plan and this Agreement shall constitute a breach of contract especially considering that those services are meant to benefit the poor.

29. HUMAN RESOURCES AND LABOUR RELATIONS

29.1. The Service Provider recognises MMM's vision of being a "best practice" employer and confirms its commitment to achieving the same ideal.

29.2. In furtherance of clause 29.1 above, the Service Provider undertakes to:

29.2.1. meaningfully participate, together with MMM's other municipal entities, in the Human Resources Committee and the Local Labour Forum established by MMM, for the purposes of amongst others of:

29.2.1.1. effectively communicating and sharing relevant information;

29.2.1.2. continuous and on-going learning in respect of human resources and labour relations issues;

29.2.1.3. coordinating human resource and labour relations activities;

29.2.1.4. aligning labour relations strategies and policies;

29.2.1.5. developing and sharing best practices;

29.2.1.6. preventing disputes initiated by the unions in various forums;

29.2.1.7. fostering harmonious labour relations with the Free State Division of the South African Local Government Bargaining Council;

30. MANAGEMENT OF COMMERCIAL CONTRACTS

30.1. The revenue management services to be provided by the Service Provider to MMM in respect of commercial contracts shall be:

30.1.1. cash collection;

30.1.2. credit control;

30.1.3. invoicing;

30.1.4. billing enquiries; and

30.1.5. records and administration support as further described in this clause 28.

30.2. The Service provider shall, until such time as the Parties agree otherwise in writing:

30.2.1. render accurate monthly accounts to the commercial end users on a regular basis in accordance with normal and ordinary business practice;

30.2.2. manage account queries promptly and efficiently;

30.2.3. receive and accurately allocate all payments made on account of such invoices;

30.2.4. account to MMM for all such receipts monthly in arrears on or before the 15th day of the month and simultaneously pay to MMM the amounts so received on its behalf, without any deductions;

30.2.5. provide MMM with:

30.2.5.1. daily debtor's summary reports;

30.2.5.2. monthly debtor's summary reports;

30.2.5.3. periodic customer satisfaction reports;

30.2.5.4. monthly cash collection reports;

30.2.5.5. lists of commercial contracts that have been terminated or have expired; and

30.2.5.6. such other exception reports as may be reasonably required by MMM from time to time.

30.3. The Service Provider shall not, without the prior written consent of MMM:

30.3.1. agree to compromise any amount due to MMM in respect of a commercial contract;

30.3.2. give any extension of time or other indulgence to any of the commercial end users;

30.3.3. institute legal proceedings against any of the commercial end users.

30.3.4. MMM shall provide the Service Provider with such assistance as may be necessary to enable the Service Provider to perform its obligations effectively under this clause 30 .

31. NERSA REQUIREMENTS

Should NERSA, at any time during the continuance of this Agreement, set down any specific requirements with regard to the conditions and provisions of the service delivery contemplated in this Agreement which requirements are inconsistent with the provisions and conditions of this Agreement, the Parties agree to negotiate in good faith to amend this Agreement in order to comply with NERSA requirements.

32. ENVIRONMENT AND HUMAN HEALTH

In addition to rendering the Services in compliance with all applicable legislation, the Service Provider shall render the Services, using the Plant in such a manner as is least harmful to the environment and human health and shall, at its own cost, prevent, at least to the extent required by law, any pollution to the environment or risk to human health. The Service Provider indemnifies and holds MMM harmless against any claims that may be brought against MMM in connection with pollution of soil, water and air, human health or the environment general caused by the Service Provider.

33. WARRANTIES

33.1. The Service Provider hereby represents and warrants to MMM that:

33.1.1. this Agreement has been duly authorized and executed by it and constitutes a legal, valid and binding set of obligations on it; and

33.1.2. the execution and performance of this Agreement does not constitute a violation of any statute, judgement, order, decree or regulation or rule of any court, competent authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound.

33.2. MMM hereby represents and warrants to the Service Provider that:

33.2.1. it has full power and authority to enter into, legally bind itself by, and perform its obligations under this Agreement;

33.2.2. this Agreement has been duly authorised and executed by MMM;

33.2.3. the execution of this Agreement does not violate any judgement or order of any court, competent authority or arbitrator of competent jurisdiction applicable in relation to MMM or the existing assets of MMM;

33.2.4. it has the exclusive authority to delegate the provision the Services to the Service Provider in the Service Area and is fully authorised and entitled to authorise the Service Provider to do so on its behalf on the basis set out in this Agreement;

33.2.5. it has the legal capacity and authority to appoint the Service Provider as a services provider in terms of the MSA on the basis set out in this Agreement.

33.3. It is expressly agreed between the Parties that each warranty and each representation given by both in this Agreement are material to this Agreement and have induced them to conclude this Agreement.

33.4. No warranties or representations which are not set forth in this Agreement shall be binding on either party.

33.5. The provisions of this clause 33 shall survive the termination of this Agreement.

34. INDEMNITIES

34.1. The Service Provider shall:

34.1.1. at its own expense and with effect from the effective date, take all reasonable precautions for the protection of life and property on and about or in any way connected with the whole or any part of the Assets and hereby does indemnify and hold MMM harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at law in respect of injury to or death of any person or loss of or damage to any person or property accruing after the effective date but prior to the termination of this Agreement unless such injury, death, loss or damage was caused by any act or omission of MMM or any of its employees, subcontractors, consultants, agents or representatives or other third parties for whom MMM is liable in law or under this Agreement. The Service Provider

shall report all serious accidents to MMM within 24 (twenty-four) hours of becoming aware of their occurrence;

34.1.2. subject to the other provisions of this Agreement, be obliged to intervene in any claim arising and to indemnify and hold MMM harmless from any claim, damage, loss, cost, expense (including reasonable legal expenses on a full indemnity basis) arising from or attributable to the Service Provider in respect of the provision of the Services or the operation and maintenance of the Assets unless such injury, death, loss or damage was caused by any act or omission of MMM or any of its agents, employees, subcontractors, consultants, or representatives or other third parties for whom MMM is liable in law or under this Agreement; and

34.1.3. subject to the other provisions of this Agreement and as from the effective date, be responsible to MMM and third parties for all risks and obligations, pertaining to the provision of the Services in accordance with this Agreement, and shall be responsible for the payment of any damages, claims or losses due to any act or omission of the Service Provider and shall indemnify and hold MMM harmless for all losses, damages, penalties, legal fees and costs (including reasonable expert's fees) due to a breach of this undertaking. The Service Provider will be obliged to intervene and shall assume responsibility in respect of any legal proceedings (including arbitration) of any nature whatsoever, and whether brought within South Africa or elsewhere that is instituted against MMM in respect of any acts or omissions of the Service Provider, or any other subcontractor or any person for whom it may be liable in law in respect of the supply or failure to provide the Services that may occur as from the effective date. MMM shall forthwith notify the Service Provider in writing of any claim made against it in this regard or of any such claim that comes to its knowledge;

34.1.4. subject to the other provisions of this Agreement and as from the Effective Date, comply with all labour legislation, and shall and hereby does indemnify and hold MMM harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising from any act or omission of the Service Provider in relation to payments for all income or other taxes, national insurance contributions or levies of any kind relating to or

arising out of the employment of any person by the Service Provider or as a result of or arising from any industrial action or related conduct embarked upon by any employee.

34.2. MMM shall indemnify and hold the Service Provider harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including:

34.2.1. reasonable legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at law in respect of any injury to or death of any person or loss of or damage to any person or property where such injury, death, loss or damage was caused by any act or omission of MMM or any of its employees, sub-contractors, consultants, agents or representatives or other third parties for whom MMM is liable in law or under this Agreement, whether prior to or after the effective date and MMM will be obliged to intervene and shall assume responsibility in respect of any such claim arising; and

34.2.2. indemnify and hold the Service Provider harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including the reasonable legal expenses on a full indemnity basis) of whatsoever nature arising from or attributable to MMM whether prior to or after the effective date in discharging any of its rights or obligations under this Agreement where such injury, death, loss or damage was caused by any act or omission of MMM or any of its agents, employees, sub-contractors, consultants, or representatives or other third parties for whom MMM is liable in law or under this Agreement and MMM will be obliged to intervene in any such claim arising.

35. CONFIDENTIALITY

35.1. 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").

35.2. The Parties shall not during 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.

35.3. 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.

35.4. Notwithstanding anything to the contrary contained in this Agreement, the Parties' obligations of confidentiality will not extend to:

35.4.1. 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);

35.4.2. 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

35.4.3. 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.

36. 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:

36.1. the relationship between them shall be governed by the principles of utmost good faith; and

36.2. this Agreement shall be administered and promoted with the highest degree of integrity between the Parties.

37. TERMINATION

37.1. The termination of this Agreement is initiated by a notice from either Party in terms of the provisions of this clause. The notice shall set in motion a transitional phase, culminating in termination, as described in clause 38.

37.2. MMM may terminate this Agreement -

- 37.2.1. upon 180 (one hundred and eighty) days' notice to the Service Provider in writing;
- 37.2.2. notwithstanding the provisions of clause 37.2.1, upon 14 (fourteen) days' notice to the Service Provider in writing on the occurrence of any one of the following events –
- 37.2.2.1. if there is a compulsory acquisition or expropriation by any Competent Authority of a material part of the Assets or other rights necessary for the supply of the Services;
 - 37.2.2.2. if any Competent Authority withdraws, revokes or materially varies any licence, consent or other authority necessary for the provision of the Services;
 - 37.2.2.3. a competent court declares that a financial emergency exists as contemplated in the MFMA, to be enacted, or in the event of an administrator being appointed in consequence of such declaration;
 - 37.2.2.4. where any judgment has been granted which is not subject to appeal or review, or if it is, where such an appeal or review is not diligently pursued, for the winding up;
 - 37.2.2.5. if the Service Provider adopts a resolution for the voluntary winding up of or judicial management of the Service Provider and such resolution having been ratified by Council;
 - 37.2.2.6. if the Service Provider commits an act which would have been an act of insolvency under the Insolvency Act 24 of 1936 had it been committed by a natural person, or if the Service Provider is deemed to be in financial distress in terms the Companies Act; or
 - 37.2.2.7. if the Service Provider disposes of movable assets owned by it to such an extent that it is unable in MMM's reasonable view to continue properly with the provision of the Services. If MMM's view in this clause 37.2.2 is disputed by the Service Provider, the Service Provider may refer the matter for resolution in terms of clause 24, as constituting a technical matter.

37.3. Should any of the following events occur, MMM shall, subject to the remaining provisions of this clause 37.3 , be entitled to cancel this Agreement on 30 (thirty) days' written notice to the Service Provider:

37.3.1. the Service Provider consistently fails to attain the service levels prescribed in terms of clause 12 in a manner that is inconsistent with an intention or ability to provide the Services in terms of this Agreement;

37.3.2. the Service Provider fails to maintain the Plant in accordance with the provisions of clause 19.1; or

37.3.3. the Service Provider fails to prepare budgets, quarterly reports or annual reports in terms of this Agreement or in terms of any Regulatory Provision.

38. EFFECT OF NOTICE OF TERMINATION

38.1. The Parties acknowledge that it is the duty of MMM to ensure as far as is reasonably possible uninterrupted delivery of the Services in the best interests of the local community. The Parties have accordingly agreed that upon notice of termination in terms of this Agreement:

38.1.1. the Parties shall negotiate a transitional process which shall be designed to achieve an uninterrupted delivery of the Services;

38.1.2. the Service Provider shall continue to provide the Services in terms of this Agreement until MMM has appointed an alternative service provider or has itself taken control of the provision of the Services; and

38.1.3. this Agreement shall terminate on a date or on an occurrence of an event agreed between the Parties, or if no such date or event is agreed between the parties when a new service provider has been appointed by MMM or there has been a transfer of assets or the Business to a buyer, whichever is the sooner, provided that if a new service provider is appointed by MMM before the transfer of the Assets or the Business to a buyer, any undertakings made by either Party to the other in relation to the transition process shall remain binding and such undertaking shall be deemed to be severable from the rest of the Agreement and shall remain in force despite the termination of the rest of the Agreement.

38.2. MMM shall be entitled to liquidate and disestablish the Service Provider:

- 38.2.1. if the Agreement terminates in terms of clause 37 above and MMM found an alternative service provider to render the Services;
- 38.2.2. following an annual performance review, if the performance of the municipal entity is unsatisfactory;
- 38.2.3. if MMM does not impose a financial recovery plan in terms of the Municipal Finance Management Act and the municipal entity continues to experience serious or persistent financial problems; or
- 38.2.4. if MMM has terminated the service delivery agreement or other agreement it had with the municipal entity.
- 38.3. Upon the liquidation and disestablishment of the Service Provider and provided MMM has not found an alternative service provider to render the Services, the assets in the control and possession of the Service Provider on the termination of the Agreement and thereafter shall be transferred and delivered to MMM and MMM shall provide the Services from an internal department of MMM.

39. **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.

40. **DISPUTE RESOLUTION**

40.1. In this clause 40:-

40.1.1. "**MEC**" means MEC as defined in section 1 of the Intergovernmental Relations Framework Act No. 3 of 2005.

40.1.2. "**Dispute**" means any dispute, arising between the Parties in connection with:

-

40.1.2.1. the formation or existence of;

- 40.1.2.2. the implementation of;
- 40.1.2.3. the interpretation or application of the provisions of;
- 40.1.2.4. the Parties' respective rights and obligations in terms of or arising out of or the breach or termination of;
- 40.1.2.5. the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of; or
- 40.1.2.6. 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.

- 40.2. 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.
- 40.3. 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.
- 40.4. Within 7 (seven) days of receipt of the notice in clause 27.3, senior representatives of the Parties must meet with each other and endeavour in good faith to settle the dispute by informal negotiations.
- 40.5. 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.
- 40.6. 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.
- 40.7. Once a formal intergovernmental dispute has been declared, the Parties must meet within 7 (seven) days of the declaration of the intergovernmental dispute to: -
 - 40.7.1. determine the nature of the dispute;
 - 40.7.2. the material issues of such dispute; and

40.7.3. designate a facilitator.

40.8. The facilitator shall be, if the matter in dispute is principally: -

40.8.1. a legal matter - a retired Judge of the High Court of South Africa;

40.8.2. an accounting matter - a practising chartered accountant in Bloemfontein of at least 10 (ten) years' standing;

40.8.3. any other matter - any independent person, agreed upon between the Parties, failing which the independent person shall be appointed by MMM.

40.9. The facilitator must submit to the MEC, a report of the dispute, which shall include:

40.9.1. the nature of the dispute and the precise issues that are in dispute;

40.9.2. the mechanism or procedure to be used to settle the dispute;

40.9.3. the decision taken by the facilitator and reasons for such decision; and

40.9.4. any other matter that may be prescribed by regulation in terms of section 47 of the Intergovernmental Regulations Framework Act No. 13 of 2005)

40.10. Should the Parties fail to meet in accordance with clause 40.6 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.

40.11. The decision of the facilitator or the MEC, 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.

40.12. No Party shall be entitled to institute judicial proceedings unless the provisions of this clause 40 have been fully complied with.

40.13. The negotiations and discussions conducted pursuant to this clause 40 shall be privileged and may not be used in any judicial proceedings as evidence by or against any Party.

40.14. The provisions of this clause 40-

40.14.1. 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;

40.14.2. 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.

40.15. The provisions of this clause 40 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 mandamus, for which purpose the Parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa, Bloemfontein.

40.16. The Parties duties, rights and obligations in terms of this Agreement shall continue notwithstanding the pending finalisation of any dispute.

40.17. 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.

41. GOVERNING LAW

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

42. SEVERABILITY

42.1. 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:

42.1.1. the legality, validity or enforceability in that jurisdiction of the other provisions of this Agreement; or

42.1.2. the legality, validity or enforceability in other jurisdictions of that provision or any other provision of this Agreement.

42.2. 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.

43. ENTIRE AGREEMENT

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

44. NOTICES

44.1. 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:

44.1.1. For MMM:

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

Attention: Municipal Manager/ Head of Corporate Services

E-mail: tankiso.mea@mangaung.co.za
david.nkaiseng@mangaung.co.za

44.1.2. For the Service Provider:

Physical: Fort Street
Oranjesig Street
Bloemfontein, 9300

Attention: Chief Executive Officer/ Company Secretary

E-mail: thabo.malgas@centlec.co.za

44.2. 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:

44.2.1. at its registered office, or such other address as it may notify to the other Party for such purpose;

- 44.2.2. at any such address as a Party may in writing notify to the other Party for such purpose.
- 44.3. A communication sent according to clause 44.2 shall be deemed to have been received:
- 44.3.1. if delivered by hand, at the time of delivery;
 - 44.3.2. email or other electronic communication, at the time of completion of transmission by the sender;
 - 44.3.3. except that if an electronic 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; or
 - 44.3.4. if sent through a courier company in a correctly addressed envelope to it at an address chosen as its *domicilium* to which post is delivered shall be deemed to have been received on the 3rd (third) Business Day after posting (unless the contrary is proved).
- 44.4. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 44.

45. ANTI-CORRUPTION

- 45.1. 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.
- 45.2. 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.

46. GENERAL

46.1. Whole

46.1.1. This Agreement constitutes the whole of the agreement 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.

46.1.2. 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.

46.2. 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.

46.3. 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.

46.4. 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.

43.5 Data Security Management and Intergration

Parties shall implement the data storage back up for purposes of data recovery. All Service Provider data, ICT systems, data centre, security, applications, software, and networks will be integrated with and to systems, data centre, security, applications, software, and networks of MMM for mutual security, protection, information link, sharing and seamless usage purposes

43.6 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.

43.5 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 other agreement between the Parties.

47. SIGNATURE

46.5. This Agreement is signed by the Parties on the dates and at the places indicated below.

46.6. 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.

46.7. The persons signing this Agreement warrant their authority to do so.

46.8. 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) LIMITED

Signature

Name of Signatory:

Designation of Signatory:

SCHEDULE A – SERVICES

1. Core Services

The Service Provider shall take control and manage the Assets for the provision of the following core services:

- 1.1. Distribution network infrastructure, including all substations, underground cabling, and overhead cabling and poles;
- 1.2. Metering;
- 1.3. Customer management;
- 1.4. Revenue, including vending points.

2. Non-core Services

The Service Provider shall control and manage the Assets for the provision of the following non-core services:

- 2.1. Public lighting, including street lighting and high mast lighting.

SCHEDULE B – SERVICE PERFORMAMCE LEVELS

(2020/2021 COUNCIL APPROVED IDP TO BE ATTACHED)

DRAFT

SCHEDULE C – ANNUAL BUDGET

(COUNCIL APPROVED ANNUAL BUDGET OF 2020/2021 TO BE ATTACHED)

DRAFT

SCHEDULE D - BUSINESS PLAN

(COUNCIL APPROVED BUSINESS PLAN LINKED TO THE IDP FOR 2020/2021 to be ATTACHED)

DRAFT

SCHEDULE E - FINANCIAL PERFORMANCE TARGET FRAMEWORK

In the time being whilst a financial contribution model and formula is being developed Service Provider will comply with the following financial performance targets.

Revenue Collection

A proportional amount per month based on the approved budget of Service Provider. Revenue collection Rate must not be below 95%.

Direct Revenue Contribution to the MMM

A specific amount of money drawn from the approved budget including all collected fines be paid to the MMM per quarter on or before 10th of the 1st month of a quarter in accordance with the payment table or formula below:

TOTAL REVENUE

Minus expenditure including Eskom in order of priority below

Minus- Eskom payment per invoice

Minus – Budgeted Operational Expenditure

Minus minimum monthly surplus revenue of R 000.00. Monthly surplus revenue shall be inclusive

Noncash costs such as streetlights

Compensation for use of assets

Cash payments

The Service Provider shall budget for the minimum amount of R000. 00 per quarter as revenue contribution to MMM.

In the event the minimum surplus revenue is accumulated R 000 00.00 in a specific quarter, any net surplus may with the written permission of the Municipal Manager be invested by the Service Provider towards Eskom and further development.

BULK PAYMENTS TO ESKOM

The Service Provider will continue to pay bulk accounts to Eskom and without default.

ADJUSTMENTS TO REVENUE CONTRIBUTIONS

The parties will from time to time closely monitor the financial performance of the service in the meetings envisaged in clause 44 of this agreement and may accordingly adjust figures as per prevailing performance circumstances. Such adjustments will be accounted and included as part of budget adjustment processes.

