

CONSUMER AGREEMENT POLICY

Item A-F (32-2016) CM 28/04/2016	REVIEWD INTEGRATED DEVELOPMENT PLAN (IDP) AND MEDIUM TERM REVENUE AND EXPENDITURE FRAME WORK (MTREF): 2016/2017 TO 2018/2019
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Resolved:

5. **That** to guide the implementation of the municipality's annual budget, the Council of the EMM **APPROVES** the policies as set out in the following Annexures of this document:

- Annexure D1** Medium-term Budget Policy Statement (reviewed)
- Annexure D2** Pricing Policy Statement (reviewed)
- Annexure D3** Property Rates Policy (remains unchanged)
- Annexure D4** Provision of Free Basic Electricity Policy (remains unchanged)
- Annexure D5** Waste Management Services Tariff Policy (reviewed)
- Annexure D6** Consumer Deposit Policy (reviewed)
- Annexure D7** Indigent Policy (remains unchanged)
- Annexure D8** Credit Control & Debt Collection Policy (reviewed)
- Annexure D9** Provision for Doubtful Debtors and Debtors Write Off (reviewed)
- Annexure D10** Budget Implementation and Monitoring Policy (remains unchanged)
- Annexure D11** Municipal Entity Financial Support Policy (reviewed)
- Annexure D12** Accounting Policy (reviewed)
- Annexure D13** Funding and Reserve Policy (remains unchanged)
- Annexure D14** Borrowing Policy (remains unchanged)
- Annexure D15** Cash Management Policy (remains unchanged)
- Annexure D16** Policy on electricity metering for residential and small business customers in the EMM (reviewed)
- Annexure D17** Policy for the Vending of Pre-paid Electricity (reviewed)
- Annexure D18** Policy for Correction of Meter Reading and Billing Data (remains unchanged)
- Annexure D19** Electricity Tariff policy (reviewed)
- Annexure D20** Virement Policy (remains unchanged)
- Annexure D21** **Consumer Agreement Policy (reviewed)**
- Annexure D22** Renewable Energy Revenue Loss Mitigation Policy (new)

PREAMBLE

WHEREAS it is expedient for municipalities to take reasonable steps to ensure that services are rendered to consumers;

AND WHEREAS the submission and updating of valid customer information are critical in delivery of service, statements and collection process;

NOW THEREFORE the Council of the Ekurhuleni Metropolitan Municipality has adopted the Consumer Deposit Policy as set out hereunder –

CONTENTS

1.	DEFINITIONS	3
2.	CONSUMER AGREEMENT	6
3.	DEPOSIT	6
4.	CATEGORIES OF CONSUMERS	6
5.	CATEGORIES OF USAGE OF PROPERTIES.....	6
6.	CATEGORIES OF SERVICE	7
7.	STANDARD TERMS AND CONDITIONS.....	7
8.	INFORMATION TO BE FURNISHED WITH APPLICATION FOR SERVICE	11
9.	DECLARATION	12
10.	FRAUD, THEFT AND OTHER CRIMINAL ACTIVITY.....	12
11.	SHORT TITLE.....	13

CONSUMER AGREEMENT POLICY

1. DEFINITIONS

For the purpose of this policy, any word or expression to which a meaning has been assigned in the Act, shall bear that same meaning in this policy, unless the context indicates otherwise:

- "Account"** : Account in name of customer held with the Ekurhuleni Metropolitan Municipality;
- "Account Statement"** : Account Statement - formal notification by means of a statement of account to registered account holder liable for payment of amounts levied for fees, charges, surcharges on fees, property rates and other municipal taxes and services, levies, penalties and duties, indicating the net accumulated balance of the account
- "Act"** : means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), as amended from time to time;
- "Arrears"** : Amount due, owing and payable in respect of fees, charges, surcharges on fees, property rates and other municipal taxes and services, levies, penalties and duties and not paid by the due date;
- "By-law"** : means a by-law adopted by the Municipality;
- "Chief Financial Officer"** : means the person appointed by the municipality as Chief Financial Officer of the Ekurhuleni Metropolitan Municipality in terms of section 56 of the Local Government : Municipal Systems Act, 2000 (Act 32 of 2000);
- "City Manager"** : means the person appointed by the Municipality as the City Manager of the Ekurhuleni Metropolitan Municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any person acting in such position and to whom the City Manager has delegated a power, function or duty;
- "Consumer"** : means any occupier of any premises to which the municipality has agreed to supply or is actually supplying

municipal services, or if there is no occupier, the owner of the premises and or recipient and or consumer of various services rendered by the municipality. A customer will therefore be deemed a customer by virtue of receiving, consuming and or utilising any facility, equipment, service rendered by the municipality and or a municipal entity or an agent as appointed by the municipality

- “Council”** : Means –
- (a) the “Municipality” and vice versa;
 - (b) the Council of the Ekurhuleni Metropolitan Municipality established by Provincial Notice No. 6768, as amended, exercising its legislative and executive authority through the municipality;
 - (c) its successor in title; or
 - (d) a structure or person exercising a delegated power or carrying out an instruction, where any power in these by-laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Act;
 - (e) a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81(2) of the act, or any other by-law, as the case may be.
- “customer”** : means “Consumer”
- “illegal connection”** : a connection to any system through which municipal services are provided, which is not authorised or approved by the Municipality or its authorised agent;
- “municipality”** : means the “council” and vice versa
- “owner”**
- (a) in relation to a property referred to in paragraph (a) of the definition of “property”, means a person in whose name ownership of the property is registered;
 - (b) in relation to a right referred to in paragraph (b) of the definition of “property”, means a person in whose name the right is registered;
 - (c) in relation to a land tenure right referred to in paragraph (c) of the definition of “property”, means a person in whose name the right is registered or to whom it was granted in terms of legislation; or
 - (d) in relation to public service infrastructure referred to in paragraph (d) of the definition of “property”,

means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of “publicly controlled” : provided that a person mentioned below may for the purpose of these By-laws be regarded by the Council as the owner of a property in the following cases:

- (i) A trustee, in the case of a property in a trust excluding state trust land;
 - (ii) An executor or administrator, in the case of a property in a deceased estate;
 - (iii) A trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
 - (iv) A judicial manager, in the case of a property in the estate of a person under judicial management;
 - (v) A curator, in the case of a property in the estate of a person under curatorship;
 - (vi) A person in whose name a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude;
 - (vii) A lessee, in the case of a property that is registered in the name of the Council and is leased by it; or
 - (viii) A buyer, in the case of a property that was sold by the Council and of which possession was given to the buyer pending registration of ownership in the name of the buyer;
- (e) any legal person, including but not limited to:
- (i) a company registered in terms of the Companies Act, 1973, a trust, a close corporation registered in terms of the Close Corporations Act, 1984; as amended by the Companies Act, 2008;
 - (ii) any department of State;
 - (iii) any Council or Board established in terms of any legislation applicable to the Republic of South Africa;
 - (iv) any Embassy or other foreign entity.

“Registered Property” : Property registered in Deeds Office

2. CONSUMER AGREEMENT

- (a) In order to ensure that a proper legal relationship exists between the Council and its customers, no services shall be supplied unless a consumer agreement had been entered into between the Municipality and the customer.
- (b) The customer must apply for the services on the form prescribed by Council, and the consumer agreement must form an integral part of the application.
- (c) The customer must furnish all the particulars required in the application form and sign it before it is submitted to the Municipality.
- (d) A consumer agreement must be updated whenever the provisions of the agreement no longer reflect the correct particulars of the customer, or the type of service rendered to the owner or occupier of property changes.
- (e) The employees of the municipality must take care that the customer understands what information is required in the application form as well as the implications when applying for a service.

3. DEPOSIT

Deposit in respect of services will be raised as set out in Deposit Policy, the amount of which is determined by Council, from time to time.

4. CATEGORIES OF CONSUMERS

This policy shall apply to, but not be limited to, the following **categories of consumers**

- (a) Residential consumers
- (b) Business consumers
- (c) Non-governmental organisations for profit and non profit
- (d) Educational institutions for profit and non profit
- (e) Religious institutions
- (f) National, provincial and local government
- (g) State owned entities
- (h) Any other category of consumers as determined by the municipality from time to time

Different application forms for different categories of customers may be prescribed.

5. CATEGORIES OF USAGE OF PROPERTIES

The usage of properties will be determined in terms of the zoning of property as approved in terms of Town Planning Scheme and may include, but not be limited to:

- (a) Residential properties;
- (b) Industrial properties;
- (c) Business and commercial properties;
- (d) Farm properties used for –
 - (i) agricultural purposes;
 - (ii) residential purposes
 - (iii) Industrial purposes;

- (iv) business and commercial purposes; or
- (v) purposes other than those specified in sub paragraphs (i) to (iv);
- (e) Smallholdings used for –
 - (i) agricultural purposes;
 - (ii) residential purposes
 - (iii) Industrial purposes;
 - (iv) business and commercial purposes; or
 - (v) purposes other than those specified in sub paragraphs (i) to (iv);
- (f) State-owned properties;
- (g) Municipal properties;
- (h) Public service infrastructure;
- (i) Public service purpose properties;
- (j) Privately owned towns serviced by the owner;
- (k) Formal and informal settlements;
- (l) State trust land;
- (m) Protected areas;
- (n) Properties on which national monuments are proclaimed;
- (o) Properties owned by public benefit organizations and used for any specific public benefit activities listed in Part 1 of the Ninth Schedule to the Income Tax Act; or
- (p) Properties used for multiple purposes.

6. CATEGORIES OF SERVICE

Customers may apply for any of the following services, where the necessary service infra-structure already exists, or are in the process of being installed:

- (a) Water provision
- (b) Sewerage
- (c) Electricity
- (d) Refuse removal services
- (e) Other services - Any other service rendered by council.

7. STANDARD TERMS AND CONDITIONS

Every customer agreement must contain standard terms and conditions covering at least the following aspects:

(i) General terms and conditions

- (a) The Applicant must apply to the Ekurhuleni Metropolitan Municipality for the supply of the services stipulated in the application form.
- (b) The Municipality must have jurisdiction and control over the property to which the agreement relates and the applicant must accept responsibility for the payment of all amounts due for such services.
- (c) The Applicant must warrant that in the case where a change of ownership of the property has taken place, an electrical compliance certificate had been obtained.
- (d) Failure to receive an account statement, for whatever reason, does not exempt the customer from payment thereof.

- (e) The Applicant must undertake to notify the Municipality in writing should an account for services rendered not be received within one month after the closing date of the period in which those services were rendered.
- (f) The Applicant must state the date of intended occupation of the property where the service applied for is required.

(ii) Management of accounts

- (a) The Municipality may in terms of the Municipal Systems Act-
 - (i) consolidate any separate accounts of the Applicant;
 - (ii) credit a payment by the Applicant against any account of the Applicant; and
 - (iii) implement any of its debt collection and credit control measures in relation to any arrears on any of the accounts of the Applicant.
 - (iv) credit a payment to any debt of the applicant.
- (b) The Municipality may appropriate all payments on outstanding accounts in the order as set out in Credit Control Policy.
- (c) The Municipality may –
 - (i) with the consent of the Applicant, enter into an agreement with the Applicant's employer to deduct from the salary or wages of the Applicant –
 - (aa) any outstanding amounts due by the Applicant to the Municipality; or
 - (bb) such regular monthly amounts as may be agreed; and
 - (ii) provide special incentives for –
 - (aa) employers to enter into such agreements; and
 - (bb) employees to consent to such agreements.

(iii) Disputed accounts

- (a) When there is a dispute between the Municipality and a customer over a specific amount claimed by the Municipality, the customer must make written representations to the Council in terms of which he/she may dispute the correctness of the account.
- (b) The representations contemplated in paragraph (a) must contain the following:
 - (i) the reasons for the objection; and
 - (ii) a request that the relevant meters (if any), be tested.
- (c) The representation must be accompanied by the payment of an amount equal to –
 - (i) the cost of testing the relevant meters; and
 - (ii) the average amount that was due and payable during the preceding three months; or
 - (iii) in cases where there exists no account history, or the amount has been in dispute for several months, an amount equal to an amount prescribed by Council, from time to time, shall be payable.
- (d) The Municipality must register the representations and provide the customer with a reference number.
- (e) The Municipality must –

- (i) investigate or cause the representations to be investigated within 14 days, or as soon as possible after the query or complaint was registered; and
 - (ii) inform the Applicant, in writing, of its finding as soon as possible thereafter, whereupon any arrears found to be due must be paid within 7 days from the date on which the Applicant is notified of the amount found to be due and payable.
- (f) Should the customer disagree with the finding of the Municipality, he/she may appeal in writing to the municipality within 21 days of the notification of the decision.
 - (g) The customer must state the reasons for his/her appeal.
 - (h) The municipality must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(iv) Charging for services and meters

- (a) Services supplied by the Municipality to a customer shall be paid for by the customer at the rate and date determined by the Council for that particular service.
- (b) A customer shall be responsible for the payment for all services supplied to the premises of the customer from the date on which the service must commence in terms of the consumer agreement, until the date of termination thereof.
- (c) All meters shall remain the property of the Municipality. Breakage, new installation or repairs due to mismanagement by customer are for the customer's account.
- (d) Any tampering or bridging out of meters shall constitute a criminal offence.
- (e) Free and unrestricted access to the meters must be available at all reasonable times. If access is not available or denied, services may be discontinued after due notice or additional levies may be imposed.
- (f) Interim levy, based on deemed consumption, will be raised in the event that no consumption reading, for whatever reason, is obtained during reading cycle.

(v) Claim that payment has been made

No claim that a payment has been made shall be entertained, unless such a claim is supported by a valid receipt for the particular amount and account, issued by the Municipality or one of its official third party pay points.

(vi) Interest

Interest at the applicable rate prevailing from time to time, calculated per month or part thereof must be charged on arrear amounts and may be made payable from the date on which the payment of the account became due.

Attorney and own client costs

In the event of the Municipality instituting legal proceedings against a customer, arising out of the breach of any term or condition of this agreement, the customer shall be liable to pay attorney and own client costs, debt collection costs; including the costs of any tracing fees, in respect of such proceedings.

(vii) Reduction, suspension or termination of services

The Municipality may reduce, suspend or terminate the services to a customer in terms of its credit control and debit collection policy, if the customer fails to –

- (a) pay an account; or
- (b) comply with the conditions of the agreement; or
- (c) make representations to the Municipality explaining the reasons for the default.

(viii) Termination of customer agreement

- (a) A customer may terminate the customer agreement by giving the Council not less than 7 calendar days' notice in writing. It must be noted that transfer of ownership of the property does not amount to a notice of termination of services or of this agreement.
- (b) The Council may terminate this agreement (on notice of not less than 7 days) if:
 - (i) the customer has not consumed any services during the preceding 6 months;
 - (ii) the customer has committed a breach of the agreement or the by-laws, and has failed to rectify such breach within 48 hours after being required in writing by the Municipality to do so; or
 - (iii) the customer receives the supply of water or electricity from another authority by virtue of an arrangement between the Municipality and such authority.
- (c) The Municipality may, without notice, terminate the consumer agreement for supply of water and electricity if a customer has vacated the premises to which such consumer agreement relates, and failed to make arrangements to the satisfaction of the Municipality for the continuation of the consumer agreement for supply of water and/or electricity.
- (d) If the customer is also the owner of the property concerned, the customer will remain responsible for any consumption of service and /or levies on the property until a valid new customer agreement has been entered into.
- (e) If the consumer of services, other than the owner, terminates the agreement, the service will automatically be transferred back to the owner of the property.

(ix) Consent to jurisdiction of the Magistrate's Court

- (a) The Applicant must consent to the jurisdiction of the Magistrate's Court in terms of section 45 of the Magistrate's Court Act, 1944 (Act 32 of 1944), as amended, in respect of any action which the Council may institute against him/her arising out of this agreement: Provided that the Municipality shall, notwithstanding the above, have the right to proceed with any such action in any competent court of law.

- (b) The Applicant's attention shall be drawn to the fact that the standard terms and conditions are subject to National, Provincial and Local legislation with regard to Local Government.

8. INFORMATION TO BE FURNISHED WITH APPLICATION FOR SERVICE

Every person who applies for a service must indicate the relationship between him/her and the property where the service is required, namely, whether he/she is—

(i) Individuals

- the owner - If the Applicant is the owner :
 - a copy of the deed of transfer containing the date of registration should accompany application.
 - certified copy of the Identity Documents of registered owners.
 - In the case of new connection, a certificate of occupation and an electricity approval certificate when application is made for the connection of electricity.
 - In the case of an existing connection, an electricity compliance certificate when application is made for the connection of electricity.
- the tenant - If the Applicant is the tenant :
 - a copy of the lease / rental agreement shall accompany application,
 - who is renting the property from a person/company who is not the owner of the property, he/she must submit a copy of the agreement between him/her and that person/company,
 - written permission from the owner/agent to supply services to the tenant.
 - certified copy of the Identity Documents of registered owners and tenants.
 - an electricity compliance certificate when application is made for the connection of electricity.
 - In the case of minors, the prescribed written consent and undertaking by the legal parent/guardians, and a copy of their ID documents.

(ii) Business or Legal Entity

If the applicant is a business or legal entity –

- the application must be supported by a copy of the resolution of the business entity in which the application for the service is authorized.
- Copy of registration at Registrar of Companies
- Copy of the VAT registration certificate
- Copy of Identity Document of person authorized to open account.
- a copy of the deed of transfer containing the date of registration should accompany application if applicant is the owner of property
- written permission from the owner/agent to supply services to the tenant if applicant is not owner of property.

(iii) Government, Provincial Government, Municipality.

- The name of the entity, plus the name and contact details of the Chief Accounting Officer of the entity must be supplied;

- a copy of the deed of transfer containing the date of registration should accompany application if applicant is the owner of property
- written permission from the owner/agent to supply services to the tenant if applicant is not owner of property.

Other Details that will be requested to be furnished may include, but not be limited to:

- *Contact details of applicant*
- *Physical address of applicant*
- *Postal Address of applicant*

9. DECLARATION

The application form must contain a declaration stating the following:

(i) Deposit

The applicant acknowledges that –

- (a) Deposit made by a customer is refundable, free of interest, on termination of the supply of services, provided that all outstanding amounts have been settled in terms of the property.
- (b) Deposit shall be forfeited to the Council if not claimed in writing by the customer within 12 months of the termination of all services.
- (c) The customer must notify the office of the Chief Financial Officer of any change of address in order to facilitate the refund of the deposit.

(ii) Terms and Conditions of supply

The Applicant confirms that he/she has read and agrees to the terms and conditions of supply of the services applied for as set out in application, and those laid down in the by-laws of the Municipality as well as any other applicable laws and policies

(iii) Correctness of Information furnished in application.

The applicant must certify that the information furnished in the application form is in all aspects true and correct.

10. FRAUD, THEFT AND OTHER CRIMINAL ACTIVITY

- (a) Subject to applicable legislation, the Council may refuse to enter into consumer agreement to a consumer who is found guilty of fraud, theft or any other criminal offence, or, where it is evident that such criminal offence has occurred, until such time as the total costs, penalties, other fees, illegal consumption and any applicable tariffs and rates due to the Council have been paid in full.

- (b) Illegal connection, reconnection or tampering with a service supply of Council is considered a criminal offence which will result in legal actions being taken and the immediate cancellation of user agreement between council and consumer.
- (c) Council reserves the right to refuse service agreement with tenant where illegal connection, reconnection or tampering with service supply has been identified and as such will only consider new consumer agreement with owner of property.

11. SHORT TITLE

This policy shall be called the Consumer Agreement Policy of the Ekurhuleni Metropolitan Municipality.

