

MV0294
13/5/391

PERIOD 2018-21:
(Revision: 6)

(ANNEXURE "A" ATTACHED)



**FUNDING AGREEMENT FOR PROVIDING
FREE BASIC ELECTRICITY**

(hereinafter referred to as "the Agreement")

BETWEEN

..... MIDVAAL LOCAL Municipality

(hereinafter referred to as "the Municipality")

AND

ESKOM HOLDINGS SOC LTD

(Registration Number: 2002/015527/30)

(Hereinafter referred to as "Eskom")

CS9 *[Signature]*

PREAMBLE:

WHEREAS from the 2003/04 **financial year**, two new supplementary budget components and windows have been added to the local government Equitable Share to accelerate the provision of Free Basic Services to low-income households; The 2003/04 local government Equitable Share was replaced by a new formula in 2005 which does not include windows but still fund the provision of basic services.

AND WHEREAS it is essential to oblige the Municipality, that has contracted with Eskom in line with the FBE policy initiated by the Department of Energy (DOE) and sanctioned by Cabinet, to transfer funds to Eskom for providing Free Basic Electricity at the instance of the Municipality;

Now therefore the Municipality and Eskom agree as follows:

1. DEFINITIONS:

In this Agreement, unless the context otherwise indicates –

- 1.1 **“Eligible Customers”** - are customers as determined according to the municipal indigent policy, or any other method (technical/ standard) as agreed by the Municipality and Eskom as fully described in Annexure A;
- 1.2 **“Equitable Share”** - means the unconditional grant allocated to municipalities to supplement their own revenue to deliver basic services to the poor households;
- 1.3 **“Financial Year”** - means a 12 (twelve) month period commencing on 1 July and ending 30 June;
- 1.4 **“Free Basic Electricity (FBE)”** - means limited free amount of electricity supply deemed necessary to support basic energy services of a typical poor household as determined by Government from time to time as contained in the Free Basic Electricity, Notice 1693 of 2003;
- 1.5 **“Parties”** - means the Municipality and Eskom;

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- 1.6 **"Tax Invoice"** - means a document provided as required by Section 20 of the Value-Added Tax Act No 89 of 1991, as amended;
- 1.7 **"VAT"** - means Value-Added Tax as provided for in Section 7 of the Value-Added Tax Act No 89 of 1991, as amended;
- 1.8 **"MFFBE"** - means Municipal Funding for FBE above 1st 50 KWh as per policy of the Municipality.

2. PURPOSE

This agreement record and specify the details of the Free Basic Electricity service to be rendered, at the instance of the Municipality, by Eskom to Eligible Customers falling within the municipal boundaries of the Municipality.

3. COMMENCEMENT AND DURATION OF AGREEMENT

Notwithstanding the date of signature of this agreement, the Parties agree that this agreement will commence on **1 July 2018** and terminate on **30 June 2021**. The Parties may agree, in writing, at least 3 (three) months prior to the termination date to extend the duration of this agreement for further periods.

4. SCOPE OF SERVICES

- 4.1 Eskom shall, on behalf of the Municipality, provide FBE through its prepaid and conventional meters to Eligible Customers falling within the municipal boundaries of the Municipality. The Municipality will indicate upfront, as to when and how often (once or twice per year) it is likely to renew its indigent list.
- 4.2 Eskom shall supply eligible Customers who have prepaid meters with tokens and shall provide eligible Customers who have conventional meters with an allocation on a targeted basis as provided in the FBE policy or as agreed between the Municipality and Eskom, subject to the provisions of Annexure "A" hereto. Municipal requests for customized FBE system configurations will not be entertained due to their high costs and resource implications.



4.3 Subject to Annexure "A" hereto, Eskom shall provide 50kWh of electricity to Eligible Customers and shall charge the Municipality for the FBE on the basis of the recommended National Tariff for the provision of FBE as amended by the National Energy Regulator of South Africa (**NERSA**) from time to time.

4.4 Eskom shall furnish the Municipality with monthly Tax Invoices detailing the FBE units issued and the total amount owed by the Municipality to Eskom.

5. FUNDING ARRANGEMENT

5.1 The Municipality shall annually at the beginning of its financial year inform Eskom of the amount of funding to be allocated for the rendering of FBE as contemplated in sub-clause 4.3 of this agreement.

5.2 The Municipality shall monthly utilize the funds allocated for the FBE in the Equitable Share and other funds for the payments of FBE issued/used.

5.3 The tax invoices referred to in sub-clause 4.4 of this agreement shall constitute prima facie proof of the amount due by the Municipality to Eskom.

6. OBLIGATIONS OF THE MUNICIPALITY

Indicate your options below:

Technical Targeting Agreement: Indicate Yes or

Municipal Indigent Policy Agreement: Indicate Yes or

Municipal Blanket Policy Agreement: Indicate Yes or

6.1 The Municipality shall 30 days after the date of invoice, settle the tax invoice provided by Eskom for the FBE supplied to households during the preceding month. Interest at prime plus five percent will be charged to the Municipality if it fails to settle payments/accounts outstanding for longer than 30 days from the date of invoice.

6.2 The amount claimed by Eskom shall be calculated by using the tariff referred to in clause 4.3 of this agreement.

6.3 Should the Municipality fail to transfer funds to Eskom in terms of clause 6.1 hereof, Eskom may, upon 30 days written notice to the Municipality, discontinue the provision of FBE.



- 6.4 The Municipality shall monitor the provision of FBE by Eskom, and where such FBE has not been rendered in accordance with FBE policy contained in Notice 1693 of 2003, the Municipality shall deal with Eskom as set out in clause 8 of this agreement.
- 6.5 The Municipality shall, on a monthly basis liaise with Eskom on the progress made on the roll out and the challenges faced by Eskom on the running of FBE and assist/provide solutions to such challenges.

7. RESPONSIBILITIES AND RIGHTS OF ESKOM

- 7.1 Eskom shall at all times maintain full, accurate and up to date records relating to the provision of FBE to households as agreed to between the Parties, including percentage of households supplied and particulars of account numbers or meter numbers or customer names if available and consumption per account or meter number.
- 7.2 Eskom shall also keep detailed records of identified consumers who did not receive FBE allocation for reasons other than service termination due to non-payment, hardware tampering and illegal connections.
- 7.3 Eskom shall designate a banking account with a registered bank into which monies owed to Eskom can be deposited by the Municipality.
- 7.4 At the end of each financial year, all financial and other records pertaining to the provision of FBE shall be made available by Eskom to the Municipality on request, within 30 (thirty) calendar days after a request for such information at the domicilium offices of Eskom so that the Municipality can verify that clause 4.3 of this agreement is complied with.
- 7.5 Eskom shall provide the Municipality and the Department of Cooperative Governance with monthly reports detailing the following:
- 7.5.1 Number of households provided with the FBE;
 - 7.5.2 The percentage of FBE issued on the total Eligible Customers.
- 7.6 Eskom will be required to interact with consumers concerning matters related to the provision of the FBE in accordance with sub-clause 4.2 of this agreement.



8. BREACH OF CONTRACT

- 8.1 A failure to comply with any of the provisions of this agreement shall constitute a breach of this agreement.
- 8.2 Should a breach envisaged in sub-clause **8.1** of this agreement occurs, the aggrieved party shall, in writing, notify the defaulting party of the breach and call upon the defaulting party to remedy the breach within a period of 30 (thirty) calendar days from the date of receipt of the notice.
- 8.3 Should the defaulting party fail to remedy the breach in line with sub-clause 8.2 of this agreement, the aggrieved party shall, without prejudice to any of its other rights, be entitled to:
- 8.3.1 discontinue the provision of FBE; and/or
 - 8.3.2 immediately cancel this agreement;

9. DEFAULT IN PAYMENTS

- 9.1 Should the Municipality be in arrears for a period exceeding 90 (ninety) calendar days, Eskom shall upon notice to the Municipality escalate the matter to the Provincial Department of Cooperative Governance and Provincial Legislature for intervention and recourse. This shall be done for purposes of arrear settlement and/or payment of the outstanding debt by the Municipality. The Municipality will be charged interest at prime plus five percent if their accounts are in arrears.
- 9.2 Should Eskom receive no payment and/or resolution after the intervention of the provincial government department referred to in clause 9.1 of this agreement, Eskom shall escalate the matter to the National Department of Cooperative Governance for resolution.
- 9.3 Notwithstanding the provision of sub-clause **9.1** and **9.2** of this agreement, Eskom shall be entitled to exercise any rights it has in law against the Municipality as a result of the failure contemplated herein.

10. AMENDMENT TO AGREEMENT

Any changes, amendments, relaxation and/or additions to the agreement shall be agreed upon in writing and duly signed by the official representatives of both Parties.

11. WAIVER

No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this agreement shall constitute a waiver of the provisions of this agreement and a party may at any time require strict compliance with the provisions of this agreement.

12. ENTIRE AGREEMENT

This agreement constitutes the sole and entire agreement between the Parties and supersedes all previous negotiations, arrangements or agreements in respect of the subject matter of this agreement.

13. SEVERABILITY

In the event that any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the agreement shall be carried out as nearly as possible according to its original terms and intent.

14. CESSION

14.1 Neither party shall cede, assign, transfer, make over or delegate any right or obligation acquired or incurred in terms of this agreement, without the prior written consent of the other party.

14.2 Notwithstanding the provision of sub-clause 14.1 of this agreement, Eskom shall be entitled to transfer, assign, cede or delegate its rights or obligations to any new legal entity.

15. DISPUTE RESOLUTION

15.1 Any dispute relating to this agreement shall be referred in writing to the CFO of the Municipality and the relevant Operating Unit Manager of Eskom or any official acting in a similar capacity for resolution. Thereafter, if no solution is found, it shall be



referred, in writing, to the Customer Service Group Executive and CEO of Eskom, the Municipal Manager of the Municipality and the Director General of the Cooperative Governance or a delegate and they shall endeavor to settle the dispute.

- 15.2 If the dispute is not settled in terms of sub-clause **15.1** of this agreement within 30 (thirty) calendar days, the matter may, at the instance of any of the Parties, be referred to arbitration in terms of the Arbitration Act, No 42 of 1965, as amended from time to time. The Parties agree to refer the appointment of the arbitrator to the Bar Council of South Africa if the matter relates to a legal dispute and if the matter relates to a financial dispute to refer the matter to the South African Association of Charter Accountants for the appointment of an arbitrator.
- 15.3 The language of the arbitration shall be English.
- 15.4 The place of arbitration shall be within the Republic of South Africa.
- 15.5 The procedural law of the Republic of South Africa shall apply where the arbitration rules are silent.
- 15.6 Notwithstanding the provision of sub-clause **15.2** of this agreement, any party may seek urgent interim relief from a competent court.

16. FORCE MAJEURE

- 16.1 Either party shall be excused from the non-performance of any of its obligations under this agreement if caused by any factor outside the control of the party, such factor including, without limitation, fire, storm, damage, inclement weather, riots, breakdown of machinery or equipment, persistent vandalism of equipment, severe unavailability of materials and technologies, strikes, lock-outs, sanctions, embargoes and actions of the legislative, or the executive, or the military authorities, or any other extreme external factor that renders the execution of this agreement impossible.
- 16.2 The affected party shall bear the onus of proving that an event of *force majeure* has occurred, and will keep the other party informed in writing of the circumstances, which the affected party claims to amount to *force majeure*.



- 16.3 If force majeure persists for a continuous period of more than 3 (three) consecutive months, either party may terminate this agreement on 30 (thirty) calendar days written notice to the other party.

17. DOMICULIUM CITANDI ET EXECUTANDI

- 17.1 The Parties choose as their respective domicilia citandi et executandi for all purposes under the agreement, whether in respect of court process, notices or documents or communications of whatever nature, the following addresses:

The Municipality

Physical Address: CNR. JANUS AND MITCHELL STREET
MEYERTON
1961

Telephone number: 082 467 2009

Facsimile number: 086 502 0523

Email address: Johand@MIDVAAL.GOV.ZA

Eskom:

Physical Address:
.....
.....

Telephone number:

Facsimile number:

Email address:

- 17.2 Any notice or communication required or permitted to be given in terms of the agreement shall be valid and effective only if effected in writing may be delivered by hand, telefax, email and registered letter. Proof of delivery in each case shall be the following: a) for a hand delivered letter, a written receipt indicating date and time of delivery, b) for a telefax, the transmission confirmation printed by the fax machine, c) for a registered letter, the official receipt of posting, d) for email, the emailed

[Handwritten signatures and initials]

communication. The aforementioned notice or communication shall be deemed to be received by the other party as follows: a) for the hand delivered letter upon delivery as indicated by the time and date of delivery, b) for the telefax the time of transmission as reflected on the transmission report, c) emailed communication as reflected by the sent date and d) for the registered letter 3 (three) calendar days after posting.

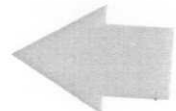
SIGNED for and on behalf of the **Municipality** by the signatory below who warrants that he /she is duly authorised.

Date: 3/7/2018

Name: A. S. A. DE KLERK

Title: MUNICIPAL MANAGER

Signature: 

 Please
SIGN

As Witnesses:

1. Name: N. AMEER-VAN WYK

Title:

Signature: 

2. Name: F. JONAS

Title:

Signature: 

SIGNED for and on behalf of **Eskom** by the signatory below who warrants that he/she is duly authorised.

Date:

Name: _____

Title:

Signature: _____



As Witnesses:

1. Name: _____

Title:

Signature: _____

2. Name: _____

Title:

Signature: _____

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ANNEXURE "A"

IMPLEMENTATION PROCESS

a) Who chooses customers?

Municipalities, shall in consultation with Eskom, identify poor households to receive 50kWh in line with either one of the three methods used below. Those methods are as follows:

(1) **Technical Targeting Method**

- All domestic grid installations (households) of 2.5 A, 8A, 10A, and 20A on prepaid metering technologies.
- All domestic grid installations (households) consuming less than 150kWh in credit meters per month.

or

(2) **Municipal Indigent Policy Method**

- Targeting poor households in line with the indigent Policy adopted by the Council which takes local circumstances and affordability into account.
- In the case where households meters with 60A, the customers will have to be identified individually as indigent and included in the register for indigent kept by the Municipality. Those meters (60A) will not be converted to 20A in line with (1) above.

or

(3) **Municipal Blanket Policy Method**

Where the municipality decides to provide all customers in a specific township area with FBE, all 60A claims would be charged at the applicable Eskom rate.

NB: When choosing an option, indicate clearly which option is chosen and which options are not chosen, as provided for in clause 6 of this agreement.

Provide clear indication of the other 2 options not chosen by strikethrough them and initial alongside the strikethrough.

b) Number of customers:

The Municipalities to determine this in line with criteria mentioned in a) above

c) Registration/Configuration:

Customers eligible for FBE will be configured into Eskom's record system before receiving allocations or tokens.

The Municipality will indicate upfront, as to when and how often (once or twice per year) it is likely to renew its indigent list.

The following mandatory FBE beneficiary information should be provided in order to enable standard configuration into the Eskom record system –

Format: (Excel or Word document submission)



Official Names	National Identification Number.	Contact Number	Stand/Plot/Erf Number	Street Address	Town/Township	Eskom Meter Number
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Municipal requests for customised FBE system configurations will not be entertained due to their high costs and resources implications.

- d) System:
 Customers will collect their tokens from any of Eskom Vendors as per normal business.

- e) Billing:
 The Municipality will be billed according to tokens issued by Vendors and FBE supplied through conventional meters after a proper reconciliation.

- f) Costs:
 The above method will attract some costs, viz additional maintenance, communication, administration, etc. (These non-energy cost will be ring-fenced and recovered as agreed with the Government in line with letter of assurance or comfort).

SIGNING OF FUNDING AGREEMENT FOR PROVISION OF FREE BASIC ELECTRICITY BETWEEN MIDVAAL LOCAL MUNICIPALITY AND ESKOM:
FUNDING AGREEMENT FOR RENDERING FREE BASIC ELECTRICITY

MY0294
REF 13/5/391

MOA : FUNDING AGREEMENT FOR PROVISION OF FREE BASIC ELECTRICITY

The Midvaal Local Municipality herein represented by **Mr. A.S.A de Klerk** in his capacity as Municipal Manager hereby confirm approval of the **Renewal of Funding of Basic Electricity contract for the period 1 July 2018 to 30 June 2021** entered into by and between Midvaal Local Municipality and **Eskom** (as per attached copy of the agreement).

The Executive Director: **Engineering Services Mr Steph Coetzee** as head of the department wherein the agreement is undertaken, in conjunction with the **Deputy Municipal Manager: Corporate Services**, confirms compliance with all legal and contractual obligations of the contract, whereas the **Executive Director: Finance** confirms compliance with all financial procedures and the availability of the funds/services for the duration of the contract.

Any contract/agreement signed on behalf of Midvaal Local Municipality, without the signature of the Municipal Manager, shall be declared null and void.

2018/06/28
Date


Engineering Services
(Head of Department)

03/07/2018
Date


DMM Corporate Services

03/07/2018
Date


ED-Finance

3/7/2018
Date


Municipal Manager

Issued and sent on 28/06/2018

The Head of Department will initial every page and append full signature on the last page of the contract.

Received by  From Eskom 076 328 0997
Date 09/06/2018
Awaiting duly signed copy from Eskom