**MANYAME RURAL DISTRICT COUNCIL DEBT MANAGEMENT BYLAWS 2022**

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# Tittle

1. This by-law may be cited as the Manyame Rural District Council Debt Management bylaws 2022

**2. Application**

1. This bylaw shall apply in respect of money due and payable to Council as defined in section 118 of the Rural District Councils Act chapter 29:13 and reviewed annually in terms of the Council budget;

**3. Interpretation**

In these by-law, unless the context otherwise requires-

2.2**“Account(s)”** means any account that includes Council rates and/or taxesand/or services;

2.3**“AOD”** means Acknowledgement of **Debt**, which means a legal documentsigned by both the account holder and the Council where the account holder acknowledges liability for an outstanding **debt** and agrees to pay the **debt**offin monthly instalment payments until such **debt**(and any interest thereon ifany) is repaid in full;

2.4**“Agreement”** means a legal document signed by the account holder that

consents to the supply of Council services.

2.5“**Arrears**” means an amount that is due, owing and payable to the Council and includes inter alia; (a) the principal **debt**(b) **collection** costs, (c) interest, (d)default administration charges, (d) connection fees;

2.6“**Customer**” means anyone who occupies premises to which the Council has

agreed to provide services or it is actually supplying services to the premises.If there is no occupier the owner of the property where the services aresupplied.

2.7“**The Council**” means the Council of MANYAME;

2.8“**Clearance Figure**” refers to an amount which an account holder and/or rate payer has to pay to the Council.

2.9 “**Collectioncharges/costs**” means **collection** charges/costs which may be

Recovered by the Council in terms of the Rural District Council’s Act. **Collection** charges include Default Administration Charges;

2.10 “**Default administration charges**” means a charge that may be imposed by the Council to recover administration costs incurred as a result of an account

holder’s default.

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2.12 “**Interest**” means a charge levied on all arrear monies and calculated at a rate determined by the Council from time to time.

2.13 “**Law**” includes a by-law;

2.15 “**bylaw**” means this document;

**Opening of customer Accounts**

An account for the provision of services will be opened for all stand holders

7.2The Council will only register accounts for account holders who are the owners of a property. No rates accounts will be registered for account holders who are Tenants except for accounts other than rates.

**8.BILLING MANAGEMENT**

The Council will endeavor to ensure:

Accurate up-to-date customer information.

Accurate monthly billing with the application of appropriate correct tariffs an service charges.

Ensuring timely dispatch of accounts.

Adequate provision and the efficient operation of pay facilities throughout the Council.

Arrangements with third party institutions to accept payments on behalf of the Council. Responsibility to ensure that payments are reflected on the account is vested with the debtor.

Appropriate/conducive hours of business to facilitate account payments.

In determining an acceptable settlement amount, the relevant official, must consider the failure of the Council to provide accurate meter readings to the

account holder.

**Account holders are obliged to ensure that:**

All accounts rendered by the Council are due and payable on or before the due date as indicated on the monthly account.

All payments, whether made by cash, cheque, stop order, electronic payments or payments made through agents should be receipted by the Council by the close of business on the due date.

Accounts rendered by the Council can be paid at any Council

cashier office and any other pay point as determined by the Council, from time to time.

The payment methods and facilities supported by the Council can be used to make payments on accounts

Failure to attend to the obligations mentioned in 8.13 and 8.14 above may act against the account holder in full and final settlement negotiations with the account holder.

**Full and final settlement of an amount**

(a) The Council Treasurer shall be at liberty to appropriate monies received in respect of any of its Council services it deems fit.

(b) Where the exact amount due and payable to the Council has not been paid in full, any lesser amount tendered to and accepted by any Council employee, except the Treasurer and/or his/her fully authorised delegate, shall not be deemed to be in final settlement of such an amount.

(c) The provisions in 2.3(a) above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.

(d) The Treasurer and/or his/her delegate shall consent to the acceptance of such a lesser amount in writing.

**Arrangements to pay outstanding and due amount in installments**

(a) A debtor may enter into a written agreement with the Council to repay any outstanding and due amount to the Council under the following conditions:

(i) the outstanding balance, costs and any interest thereon shall be paid in regular and consecutive monthly installments;

(ii) the written agreement has to be signed on behalf of the Council by a duly authorized officer. (b) Should any dispute arise as to the amount owing by an owner in respect of Council services the owner shall notwithstanding such dispute proceed to make regular minimum payments based on the calculation of the average Council account for the preceding three months prior to the arising of the dispute and taking into account interest as well as the annual amendments of tariffs of the Council

**7 Relaxation, Waiver And Differentiation**

7.1 The Council may differentiate between different categories of ratepayers, users of services, customers, debtors, taxes, services, service standards and other matters.

7.2 The Council may, in a specific instance and for a particular owner or customer, relax or waive in writing the requirements of a provision of these by-laws.

7.3 Any such differentiation or relaxation shall be upon such conditions as it may deem fit to impose, if it is of the opinion that the application or operation of that provision in that instance would be unreasonable.

**Reporting Of Defaulters**

The Council may in its discretion through a duly delegated officer report such persons that owe the Council monies to bodies that collate and retain such information. The information that would be included in such a report shall be the available personal information of the defaulter, or in the event of a legal person, the available statutory details, including information pertaining to the responsible officers of such legal person.

**12Debt Write Off**

1. The Council has the discretion to write off **debt** if irrecoverable.
2. All **debt** write offs shall be referred to the **Finance Committee and To Council**.
3. **Debt** shall be considered irrecoverable if:
4. legal recourse has been exhausted and the Council is still unable to secure payment of the outstanding **debt**; or
5. the success of future legal action by the Council to recoup the outstanding **debt** is compromised due to actions or inactions.
6. the costs of instituting legal action for the recovery of the outstanding

**Debt** would be higher than the value of the outstanding **debt**; or

1. the debtor in question cannot be traced and a tracing agency has

rendered a non-traceable report on the debtor in question; or

1. if the amount outstanding is the residue after payment of a dividend in

the dollar from an insolvent estate; or

1. a deceased estate is insolvent and has no liquid assets to cover the

outstanding amount; or

1. a competent Plea of Prescription has been raised by the defendant in

the Plea, or alternatively if the Plea of Prescription is raised ex *facie* the Plea but carries the real risk that it would be upheld if raised properly in

the Plea; or

1. if, as a result of the lack of evidence, it is not possible to prove the

**debt** outstanding; or

1. if the outstanding amount is due to an irreconcilable administrative

error by the Council; or

1. If the Sheriff of the Court has rendered a *Nulla Bona* return on

movables and the debtor has no immovable property.

1. The above factors do not constitute an exhaustive list of factors that may be taken into account, and the Council may, in its opinion, consider any other factor.
2. In exercising its discretion, the Council must act lawfully and reasonably having regard to the principles of fairness and equity.
3. A request by a account holder to write off an amount or amounts as bad **debt** must be made in the form of a submission/motivation and must be in the prescribed or required form as stipulated by the Council from time to time. Any deviation from the prescribed form shall result in the rejection of such submission/motivation.
4. In making submission for a **debt** write off, a Council Official shall take all necessary and reasonable steps to ensure compliance with this **Bylaw** and shall take all necessary and reasonable steps in the detection of fraudulent activity on the part of the account holder and shall be obliged to report such fraudulent activity to his respective Directorate.
5. An official who knowingly participates in fraudulent conduct with an accountholder in the write off of a **debt** shall be subjected to the disciplinary action as set out in the Council's Disciplinary Code of Conduct, as well as civil or criminal prosecution in a competent court of law.

**13.WRITE BACKS**

13.1The Council shall be entitled to reverse any amount written off as a bad **debt** where it is later found that an account holder has misrepresented (whether intentional or negligent) any information whatsoever in order to motivate such write-off of debt.

13.2The Council shall be entitled to effect the write back immediately against the account holder's Council account upon noting the fraud or misrepresentation.

13.3The Council may write back any amount previously written off on behalf of an account holder if the account holder at any time has a credit balance reflected against any of his/her Council accounts and requests a refund from the Council for such credit balance. The write back principle will apply to all other accountholders, including indigent account holders.

**14. INTEREST CHARGES**

14.1All outstanding debts of more than one month shall be considered overdue and accrue interest.

14.2 Interest shall be charged on all overdue accounts at a rate fixed by Council provided it does not exceed one per centum above the rate of interest charged by the State in respect of loans made to local authorities as specified in section 108 of the Rural District Council’s Act chapter 29:13.

**15INTEREST REVERSALS**

14.1An accountholder may apply to the Council, in the prescribed form, for interest on an account to be reversed.

14.2Interest on outstanding debt can be reversal when:

14.2.1 an account holder would like some relief from interest in order to

facilitate the final settlement of all outstanding debt on his account;

14.2.2 before embarking on litigation to recover outstanding debt, interest

reversal is used as a tool to persuade the account holder to settle his

outstanding debt in full;

14.2.3 in the course of litigation, the reversal of interest is used as a

negotiating point for the settlement of the matter in court;

14.3Interest reversal may also be initiated by authorized officials in instances

where errors with billing have occurred and outstanding arrears should not

have accrued interest in the first instance.

**15.REFUNDS**

15.1Any account holder may apply, in the prescribed manner, for a refund on any credit balance on their account.

15.2The refund application will be considered and verified by the Council in terms of its internal procedures

15.3The Council reserves the right to periodically determine a bottom threshold for when it is entitled to decline to issue a refund where the cost and administrative burden of issuing the refund is out of balance with the amount

to be refunded. The present bottom threshold at the point of the approval of this bylaw is $500.

15.4The Council may, at its discretion, use any payment method, when paying a

refund to an account holder.

15.5The Council will not process refunds for amounts up to and below $500 due to the administrative cost of attending to such refund.

15.6Any arrears on any account of the account holder requesting or entitled to are fund may be set off against any credit balance due to that account holder on any of his accounts before the refund is effected.

15.7There is an obligation on all account holders to ensure that their contact

details on the Council’s system are correct and updated at all times.

15.8The Council shall be entitled to write back or appropriate any unclaimed money arising from a credit balance of an account holder account, if such amount is not claimed by the account holder within a period of three years from the date when it became due to him/her.

**16CLEARANCE FIGURES**

16.1In order to obtain a rates clearance certificate, an account holder must

accurately complete a rates clearance application form in full, either manually

or electronically.

16.2The Council will provide the full outstanding amount owing on the account as a clearance figure as it is this figure that will clear the account.

16.3An account holder may also apply for a clearance certificate, in the prescribed manner, in terms of section 282 of the Rural District Councils Act.

16.4Any dispute/query regarding a clearance figure or the incomplete/incorrect completion of a clearance application form may result in a delay of the furnishing of the final figures.

16.5 An administration fee shall be included into all clearance figure amounts.

16.6The issued certificate should be in the prescribed form and must be signed by the Director of Finance or a duly authorized official.

16.7The prescribed clearance certificate is valid for a period of 120 days from the date of issue and the process for application of a clearance figure will have to be repeated if clearance amounts are not paid timeously.

**17 ISSUING OF CLEARANCE CERTIFICATE IN SPECIAL CIRCUMSTANCES**

17.1In the instance of a deceased estate where the surviving spouse or heir is a registered indigent and therefore unable to pay the amount required for the

purpose of obtaining the requisite clearance certificate, an authorized official

may recommend to the authorized forum that a clearance certificate be issued

against the writing off of the outstanding debt.

17.2In the instance where an account holder negotiates full and final settlement of his outstanding debt in order to facilitate the transfer of his property, upon payment of the accepted full and final settlement amount can entitle the account holder to immediate issue of a clearance certificate.

**18 MULTIPLE ACCOUNT MANAGEMENT**

18.1The Council may:

18.1.1 Consolidate any separate accounts of any account holder liable for

Payments to the Council, and/or separate an account of any accountholder liable for payments to the Council; provided that the accounts involved relate to the same account holder.

18.1.2 Appropriate, any credit balance on one account against an arrear

Amount on another account instead of issuing a refund for such credit balance, provided that the accounts involved relate to the same account holder.

18.2 The rule in 18.1 above does not apply in the instance where attorneys pay in moneys on behalf of their clients for the purposes of obtaining a clearance certificate.

**19ACTIONS TO SECURE PAYMENT**

19.1 The Council may use any other credit control methods, which are permitted in law. This includes but is not limited to the following:

19.1.1 Reference Checking;

19.1.2 Credit bureau, Deeds Office,

19.1.3 Deposit taking

19.1.4 Requirement to sign Account holder Agreements

19.1.5 Monthly statements

19.1.6 Statement reminder messages

19.1.7 Telephone calls

19.1.8 Notices and Final Notices

19.1.9 Termination or Restriction of Services Notices

19.1.11 Letters of demand

19.1.12 Legal Action

19.1.13 Invoke section 151 of the Rural District Councils Act 29:13 for recovery of rates.

19.2 The Council reserves the right to name and shame bad debtors.

**21 COST OF CREDIT CONTROL & DEBT COLLECTION.**

21.1Any costs incurred by the Council in collecting amounts owing to it may be recovered from the relevant account holder including administration and collection Charges.

**22COSTS OF TERMINATION OF SERVICES**

Where any service is terminated as a result of non-payment of outstanding amounts, the Council shall be entitled to levy and recover the standard **credit control** fees as determined by the Council, from time to time, from the account holder.

**23RESTRICTION OR TERMINATION OF SERVICES**

23.1 The Council may restrict or terminate the supply of water and refuse removal or discontinue any other service whenever a user of any service:

23.1.1 Fails to make full payment on the due date or fails to make acceptable

Arrangements for the repayment of any amount for services, rates or taxes or other amounts due;

23.1.2 Fails to comply with a condition of supply determined by the Council;

23.1.3Fails to repair a leak to supply that causes wastage of supply after having been advised to do so and having been given reasonable notice to comply;

23.1.4 Obstructs the efficient supply of water or any other Council services to another customer;

23.1.5 Supplies such Council service to a customer who is not entitledthereto or permits such service to continue.

23.1.6 Causes a situation which in the opinion of the Council is dangerous or a

Contravention of relevant legislation;

23.1.7 Is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act; and

23.1.8 if an administration order is granted in terms of the relevant section of the Magistrate court Act, in respect of such user.

23.2 The right to restrict, disconnect or terminate service due to non-payment shall be in respect of any services rendered by the Council and shall prevail notwithstanding the fact that payment has been made in respect of any specific service and shall prevail notwithstanding the fact that the person who entered into agreement for supply of services with the Council and the owner are different entities or parties, as the case may be.

23.3Where the account holder is deceased, the Council reserves the right to terminate the services on the said property if the account is sufficiently in arrears. The Executor of the deceased estate is then authorized to enter into acceptable arrangement with the Council so that the services may be reconnected. Such an arrangement should be reduced to writing and signed by the Executor.

**24RECONNECTION OF SERVICES**

24.1The Council shall reconnect and/or restore full levels of supply of any of the restricted or discontinued service only after the full amount outstanding is paid, including the costs of such disconnection and reconnection or acceptable arrangements having been made for payment of such outstanding amounts in terms of this Bylaw , or any other condition(s) of this Bylaw have been complied with.

24.2 Only an authorized official shall authorize the reconnection of services or reinstatement of service delivery after satisfactory payment and/or arrangement for payment has been made according to this Bylaw

**25 FULL & FINAL SETTLEMENT OF AN ACCOUNT**

25.1 The Council may negotiate a settlement of an arrear account at any stage of the collection process.

25.2 The Council shall appropriate monies received in respect of any of its debts in line with the relevant statutes.

25.3Where the exact amount due and payable to the Council has not been paid in full, any lesser amount tendered to and accepted by the Council, shall not be in final settlement of such an account.

25.4The provision above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.

25.5Only once an authorized official has, in terms of the powers delegated to him/her, accepted and confirmed in writing, payment of such lesser amount, shall be regarded as a payment in full and final settlement.

**26ARRANGEMENTS TO PAY ARREARS**

26.1 A debtor may enter into a written agreement with the Council, to repay any overdue amount by signing an acknowledgment of debt (AOD) wherein the account holder or duly authorized representative:

26.1.1 Admits liability for all outstanding amounts owing and payable to the

Council;

26.1.2 Offers to pay all outstanding amounts together with any collection costs that may have been incurred by the Council;

26.1.3 undertakes to pay collection fees for which the Council is liable in respect of the recovery of such instalment;

26.1.4 includes a consent to judgment and shall entitle the Council to obtain default judgment against the account holder should the account holder default in terms of the conditions as set out in the AOD.

26.2 Should the account holder fail to act in accordance with the written offer

made, the Council shall then be entitled to proceed to obtain default judgment against the account holder and proceed to collect any amount due owing and payable by the account holder;

26.3 Should the Council accept this offer, the acceptance shall be in writing and forwarded to the account holder via registered mail.

26.4 Should the account holder fail to pay the agreed instalments, after having been advised by the Council or his attorney in writing that his offer is accepted, the Council may proceed to obtain judgment against him/her.

26.5 The written agreement has to be signed on behalf of the Council by a duly

authorized official.

6.8Should any disputes arise as to the amount owing, the debtor will continue to make regular payments, based on the average charges for the preceding three months prior to the dispute, plus interest.

**27INTEREST ON ARRANGEMENTS**

Once an agreement has been concluded the amount in arrears will be reflected as current and no further interest will be added. In the event of default, interest will again be levied from date of default.

**28AGENTS**, **ATTORNEYS AND OTHER COLLECTION AGENTS**

28.1The Council shall procure the services of debt collection agents to act on its behalf.

28.2Under no circumstances may agents negotiate terms, extend payment periods or accept cash on behalf of the Council, unless specifically instructed in writing to do so.

28.3The cost to the Council and to the debtor must be detailed for each stage of the **credit control** measures and for all possible actions. The liability for the costs of legal action and other **credit control** actions will be for the account of the debtor.

**30 FRAUD, FORGERY, TAMPERING & OTHER CRIMINAL ACTIVITY**

The Council shall at its discretion be entitled to withhold the supply water to a debtor who is found guilty of fraud, theft or any other criminal action relating to the supply of water and services or if it is evident that fraud, theft or any other criminal action has occurred relating to such supply, until the total costs, penalties, other fees, tariffs and rates due to the Council have been paid in full.

**31. PAYMENT OF DEPOSITS**

31.1 All account holders shall pay a deposit for the supply of water by the Council calculated at the rate of the deemed consumption for a period of 2 (Two) months in respect of the property in question.

31.2 The Council may periodically review the sufficiency of the deposit paid by the account holder to ensure that the deposit held by the Council is always equivalent to 2 (two) months deemed consumption.

31.3 Any sum deposited by or on behalf of an account holder shall, be set off against any outstanding debt due by the account holder before being refunded upon termination of the account holder’s agreement for service provision.

31.4 Where a deposit has not been paid to the Council by the account holder for whatever reason, water may be disconnected until such timeas an account holder agreement has been signed and the applicable deposit has been paid.

31.5 Where a deposit has not been paid to the Council by the account holder, or during review of the sufficiency of the deposit held with the Council, it is found that the deposit paid by the account holder is not equal to 2 (two) months deemed consumption, the Council may raise the deposit against the account holder’s account after due notice to him.

**32. PAYMENT METHODS**

32.1 The Council reserves the right from time to time to introduce new payment methods in line with the advancements of technology, and to:

1. Recover the costs of the introduction of such payment methods from the account holders; and
2. Discontinue the use of existing payment methods in the case of but not limited to the following circumstances:
3. Susceptibility of payment method to fraud and corruption,
4. Difficulty with tracking payments and appropriating payments to the correct account,
5. Cost of sustaining payment method

**33 EXCESSIVE PAYMENT**S

33.1 The Council reserves the right not to accept excessive payments as payment in circumstances where such cash payment will entitle the account holder to a refund for a period of 1 (one) year following payment of the cash into the account holder’s account.

33.2 In furtherance of 33.1 above, the Council may withhold the refund of amounts under circumstances described in 33.1 above for a period of 1(one) year from the payment of the cash into the account holder’s account.

**35APPEALS**

35.3 All appeals to Council must be in the required form, failing which such may not be considered by Council

35.5 The decision of the Council, shall be final, and any further recourse should be sought through the judicial system.

**Fees**

OFFENCES

10.1 A person who –

(a) fails to give the access required by an officer in terms of these by-laws; (b) obstructs or hinders an officer in the exercise of his or her powers or performance of functions or duties under these by-laws;

(c) uses or interferes with Council equipment or consumption of services supplied;

(d) tampers or breaks any seal on a meter or on any equipment belonging to the Council, or for any reason as determined by the Treasurer causes a meter not to properly register the service used, shall be charged for usage, estimated by the Treasurer based on average usage;

(e) fails or refuses to give an officer such information as he or she may reasonably require for the purpose of exercising his or her powers or functions under these by-laws or gives such an officer false or misleading information knowing it to be false or misleading;

(f) contravenes or fails to comply with a provision of these by-laws;

(g) fails to comply with the terms of a notice served upon him or her in terms of these bylaws; shall be guilty of an offence and liable upon conviction to a period not exceeding six months of community service or a fine not exceeding R20,000, or a combination of the aforemened