

## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

## DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 1228

10 NOVEMBER 2017

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998  
(ACT NO. 107 OF 1998)****PROPOSED REGULATIONS PERTAINING TO THE FINANCIAL PROVISION FOR PROSPECTING,  
EXPLORATION, MINING OR PRODUCTION OPERATIONS**

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make regulations pertaining to the financial provision for prospecting, exploration, mining or production operations under section 44(aE), (aF), (aG), (aH) read with sections 24(5)(b)(ix), 24(5)(d), 24N, 24P and 24R of the National Environmental Management Act, 1998 (Act No. 107 of 1998) in the Schedule hereto.

Interested and affected parties are invited to submit within 30 days of the date of the publication of this notice in the *Gazette*, written representations or objections to this notice to the following address:

By post to: The Director-General  
Department of Environmental Affairs  
Attention: Chantal Engelbrecht  
Private Bag X447  
**PRETORIA**  
0001

By hand at: Reception, Environment House, 473 Steve Biko Road, Arcadia, Pretoria.

By e-mail: [cengelbrecht@environment.gov.za](mailto:cengelbrecht@environment.gov.za)

Any inquiries in connection with the notice can be directed to Ms Chantal Engelbrecht at 012 399 9288.

Comments received after the closing date will not be considered.



**BOMO EDITH EDNA MOLEWA**  
**MINISTER OF ENVIRONMENTAL AFFAIRS**

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## CHAPTER 1

### DEFINITIONS AND PURPOSE OF THE REGULATIONS

#### Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates—

**“annual rehabilitation plan”** means a plan contemplated in regulations 6(a) or 12(1) of these Regulations;

**“applicant”** means—

- (a) an applicant for an environmental authorisation in terms of the Environmental Impact Assessment Regulations, where the listed or specified activity is or is directly related to prospecting, exploration or extraction, including primary processing of a mineral or petroleum resource; or
- (b) a person who is required in terms of the Mineral and Petroleum Resources Development Act, 2002 or the Act to amend or replace the financial provision made in respect of any prospecting, exploration, mining or production operations as a result of an application for consent to cede, transfer, assign, alienate or amend a right or permit as contemplated in section 11 or section 102 of the Mineral and Petroleum Resources Development Act, 2002;

**“auditor”** means a suitably qualified person with requisite experience to audit the adequacy of the financial provision, which person must be registered with the Independent Regulatory Board of Auditors;

**“closure certificate”** means the certificate contemplated in section 43 of the Mineral and Petroleum Resources Development Act, 2002;

**“CPI”** means the consumer price index as published by Statistics South Africa from time to time;

**“Environmental Impact Assessment Regulations”** means the regulations published in terms of section 24(5) of the Act;

**“environmental risk assessment report”** means an assessment and report contemplated in regulation 6(c) or 12(3) of these Regulations;

**“exploration operation”** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**“final rehabilitation, decommissioning and mine closure plan”** means a plan contemplated in regulation 6(b) or 12(2) of these Regulations;

**“holder”** means the holder of a prospecting right, mining permit, mining right, exploration right or production right issued in terms of the Mineral and Petroleum Resources Development Act, 2002, prior to the coming into effect of the Financial Provisioning Regulations, 2015 and for which no closure certificate has been issued;

**“holder of a right or permit”** means the holder of a prospecting right, mining permit, mining right, exploration right or production right in terms of the Mineral and Petroleum Resources Development Act,

2002, which right or permit is issued after the date of the coming into effect of the Financial Provisioning Regulations, 2015 or these Regulations;

**"independent"** in relation to a person or persons conducting the determination contemplated in regulations 4, 9 and 10 or the review and assessment contemplated in regulation 9 and 11 and an auditor, means that—

- (a) such person or auditor has no business, financial, personal or other interest in the determination, review, assessment or audit in respect of which that person or auditor is appointed in terms of these Regulations; or
- (b) there are no circumstances that may compromise the objectivity of that person or auditor in performing such work,

excluding normal and fair remuneration for work performed in connection with that determination, review, assessment or audit;

**"Mineral and Petroleum Resources Development Act, 2002"** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

**"Mineral and Petroleum Resources Development Regulations, 2004"** means the Mineral and Petroleum Resources Development Regulations published in terms of section 107(1) of the Mineral and Petroleum Resources Development Act, 2002;

**"mining operation"** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**"production operation"** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**"prospecting operation"** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**"residual environmental impact"** means any environmental impact or risk that may result or manifest after actions for final rehabilitation, decommissioning and closure have been implemented;

**"specialist"** means an independent person or persons who is qualified by virtue of his or her demonstrable knowledge, qualifications, skills or expertise in the mining, environmental, water, resource economy and financial fields; and

**"the Act"** means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

### **Purpose of Regulations**

2. The purpose of these Regulations is to regulate the determination and making of financial provision as contemplated in the Act for the costs associated with the undertaking of management, rehabilitation and remediation of environmental impacts from prospecting, exploration, mining or production operations through the lifespan of such operations and residual environmental impacts that may become known in the future.

### **Application of Regulations**

3. These Regulations apply to an applicant, a holder and a holder of a right or permit notwithstanding the applicability of section 52(1) of the Mineral and Petroleum Resources Development Act, 2002.

## **CHAPTER 2**

### **FINANCIAL PROVISION**

#### **Determination of financial provision**

4. An applicant, holder or holder of a right or permit must determine and make financial provision to guarantee the availability of sufficient funds to undertake rehabilitation and remediation of the adverse environmental impacts of prospecting, exploration, mining or production operations, as contemplated in the Act and to the satisfaction of the Minister responsible for mineral resources.

#### **Scope of financial provision**

5. An applicant, holder or holder of a right or permit must make financial provision for—

- (a) rehabilitation and remediation;
- (b) rehabilitation, decommissioning and closure activities expected at the end of prospecting, exploration, mining or production operations; and
- (c) remediation and management of residual environmental impacts, including the pumping and treatment of polluted or extraneous water.

#### **Method for determining financial provision**

6. An applicant, holder or holder of a right or permit must determine the financial provision through a detailed itemisation of all activities and costs, based on the actual costs of implementation of the measures identified for—

- (a) annual rehabilitation, as identified in an annual rehabilitation plan;
- (b) final rehabilitation, decommissioning and closure of the prospecting, exploration, mining or production operations expected at the end of the life of operations, as identified in a final rehabilitation, decommissioning and mine closure plan; and
- (c) remediation and management of residual environmental impacts which may become known in the future, including the pumping and treatment of polluted or extraneous water, as identified in an environmental risk assessment report.

#### **Availability of financial provision**

7. (1) An applicant, holder or holder of a right or permit must ensure that the available financial provision, calculated using the methodology described in Appendix 1 or 2, is at any given time equal to the sum of the costs of implementing the activities identified in the plan and report contemplated in regulation 6(b) and (c) for a period of —

- (a) 3 years; or
- (b) 1 year in the case of an applicant or holder of a mining permit.

(2) The sum contemplated in subregulation (1) must be multiplied by CPI plus 2% and must include value added tax.

#### **Financial vehicles used for financial provision**

8. (1) An applicant, holder or holder of a right or permit must make financial provision by one or a combination of a—

- (a) financial guarantee from a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990) or from a financial institution as defined in the Financial Regulator Act, 2017 (Act No 9 of 2017);
- (b) deposit into an account administered by the Minister responsible for mineral resources; or
- (c) contribution to a trust fund or rehabilitation company as contemplated in section 37A of the Income Tax Act, 1962 (Act No. 58 of 1962).

(2) No financial guarantee contemplated in this regulation may be used for the financial provision required for remediation of residual environmental impacts.

(3) A financial guarantee contemplated in subregulation (1)(a) must be in the format set out in Appendix 3 to these Regulations.

(4) In the event that the bank or the financial institution intends to withdraw a financial guarantee to support an approved financial provision—

- (a) the bank or financial institution must communicate its intention to withdraw to the holder of a right or permit, the Minister responsible for mineral resources, the Minister and the Minister of Finance, by registered mail, at least four months in advance; and
- (b) the holder or holder of a right or permit must notify the Minister responsible for mineral resources, the Minister and the Minister of Finance within seven days of receipt of notification from the bank or financial institution contemplated in paragraph (a).

(5) Where a notice of withdrawal contemplated in subregulation (4) is communicated to the Minister responsible for mineral resources, the Minister and the Minister of Finance, the Minister responsible for mineral resources must, within 10 days of receipt of the notice contemplated in subregulation (4)(b), request the holder or holder of a right or permit, in writing, to provide an alternative arrangement for the financial provision within 60 days of receipt of the request.

(6) Should the holder or holder of a right or permit fail to provide the Minister responsible for mineral resources with alternative arrangements within the 60 days contemplated in sub-regulation (5), the Minister responsible for mineral resources must call on the financial guarantee and deposit it into a bank account administered by the Minister responsible for mineral resources until an alternative arrangement can be made by the holder or holder of a right or permit to the satisfaction of the Minister responsible for mineral resources.

(7) The Minister responsible for mineral resources must release the financial guarantee to the bank or the financial institution within seven days of receipt of the confirmation that the bank or the financial



institution has disbursed the funds into the bank account contemplated in sub-regulation (6), or within seven days of the receipt of an alternative financial provision arrangement made to the satisfaction of the Minister.

(8) Should the Minister responsible for mineral resources wish to initiate a claim under a financial guarantee, he or she shall first provide written notice of the intention to initiate a claim, including written reasons for such claim, to the holder or holder of a right or permit, after which the holder or holder of a right or permit must respond, within 30 days, to such notice or notify the financial institution that the guarantee may be called.

(9) The trust fund contemplated in sub-regulation (1)(c) must be established by a deed of trust which is in the format set out in Appendix 4 to these Regulations.

(10) Any financial vehicle contemplated in subregulation (1) must be clearly linked to one or more prospecting right, mining permit, mining right, exploration right or production right issued in terms of the Mineral and Petroleum Resources Development Act, 2002.

(11) Where a holder or holder of a right or permit is in possession of multiple rights or permits issued in terms of the Mineral and Petroleum Resources Development Act, 2002, the apportionment of the financial provision relating to each right and permit must be identified.

#### **General requirements for financial provision**

9. (1) Unless subregulation (2) applies, the determination, review and assessment contemplated in regulations 4, 5, 6, 7 10 and 11 must be undertaken by a specialist or specialists.

(2) An applicant, holder and holder of a right or permit may conduct the determination, review and assessment on condition that such applicant, holder and holder of right or permit appoints relevant independent specialists to externally review such determination, review and assessment.

(3) The financial provision liability associated with final closure or residual environmental impacts may not be deferred against assets at mine closure or mine infrastructure salvage value.

(4) The proof of making or adjusting the financial provision provided by the applicant, holder or holder of a right or permit must identify the manner in which the financial provision is or will be apportioned through the use of appropriate financial vehicles as provided for in regulation 8(1), as applicable.

(5) Where regulation 8(1)(a) applies, the proof of making or adjusting the financial provision contemplated in regulations 10(b) or 12(4)(b), as the case may be, must be accompanied by a verification of registration or accreditation of the financial institution contemplated in those subregulations.

(6) Where an applicant, holder or holder a right or permit makes use of the financial vehicle contemplated in regulation 8(1)(b), any interest earned on the deposit shall first be used to defray bank charges in respect of that account and thereafter accumulate and form part of the account administered by the Minister responsible for mineral resources and no interest will be payable by the Minister responsible for mineral resources to the holder of a right or permit for any amounts deposited in such account.

#### **Determination of financial provision by applicant**

10. (1) An applicant contemplated in paragraph (a) of the definition of "applicant" must—



- (a) ensure that a determination is made of the financial provision and the plans and report contemplated in regulation 6 are submitted as part of the information submitted for consideration by the Minister responsible for mineral resources of an application for environmental authorisation, the associated environmental management programme and the associated right or permit in terms of the Mineral and Petroleum Resources Development Act, 2002; and
  - (b) provide proof of payment of the financial provision, or in the case of a financial guarantee proof of such guarantee, calculated as contemplated in regulation 7, prior to commencing with any prospecting, exploration, mining or production operations.
- (2) An applicant contemplated in paragraph (b) of the definition of “applicant” must—
- (a) ensure that a determination is made of the financial provision and the plans and report contemplated in regulation 6 are submitted as part of the information submitted for consideration by the Minister responsible for mineral resources of an application for consent to cede, transfer, assign, alienate or amend a right or permit as contemplated in section 11 or section 102 of the Mineral and Petroleum Resources Development Act, 2002; and
  - (b) provide proof of payment of the financial provision, or in the case of a financial guarantee proof of such guarantee, calculated as contemplated in regulation 7, prior to receiving such written consent as contemplated in section 11 or section 102 of the Mineral and Petroleum Resources Development Act, 2002.

#### **Review, assessment and adjustment of financial provision by holder of a right or permit**

11. (1) The holder of a right or permit must annually review the plans and report contemplated in regulation 6 with a view to assessing the adequacy of the financial provision, as contemplated in regulation 7.

(2) The holder of a right or permit must, on completion of the actions contemplated in subregulation (1), identify any adjustment that need to be made to the financial provision and adjust the financial provision accordingly.

(3) Should the action contemplated in subregulation (2) or regulation 14(2) indicate an excess, the amount in excess must be deferred against subsequent assessments.

#### **Preparation and submission of plans and reports**

12. (1) The annual rehabilitation plan contemplated in regulation 6(a) must contain all information set out in Appendix 5 or, in the case of offshore oil and gas exploration or production, Appendix 8 to these Regulations.

(2) The final rehabilitation, decommissioning and mine closure plan contemplated in regulation 6(b) must contain all information set out in Appendix 6 or, in the case of offshore oil and gas exploration or production, Appendix 9 to these Regulations.

- (3) The environmental risk assessment report contemplated in regulation 6(c) must contain all information set out in Appendix 7 or, in the case of offshore oil and gas exploration or production, Appendix 10 to these Regulations.
- (4) The holder of a right or permit must annually submit to the Minister responsible for mineral resources the—
  - (a) reviewed plans and report contemplated in regulation 11(1); and
  - (b) the result of the assessment of the adequacy of the financial provision as well as the identified adjustment of the financial provision as contemplated in regulation 11(2), for approval, including proof of payment or amended guarantee.
- (5) The holder of a right or permit must ensure that the results of the assessment of the adequacy of the financial provision contemplated in regulation 11(1) and the adjustment to the financial provision contemplated in regulation 11(2) are—
  - (a) audited by an independent auditor;
  - (b) included in the form of an auditor's report; and
  - (c) submitted for approval to the Minister responsible for mineral resources as required in terms of the Act.
- (6) If the holder of a right or permit cannot submit the information and documentation contemplated in subregulation (4) and (5) within the period stipulated, such a holder of a right or permit must, prior to the lapsing of the relevant period, request an extension from the Minister responsible for mineral resources whilst providing a detailed explanation of the reasons for the inability to submit such report within the stipulated period.
- (7) The extension of the time period contemplated in sub-regulation (6) may be granted for a maximum period of three months and no further extension will be allowed.
- (8) An applicant or holder of a right or permit must include the results of the assessment of the adequacy of the financial provision contemplated in regulation 11(1) and the adjustment of the financial provision contemplated in the regulation 11(2) in an environmental audit report required and submitted in terms of the Environmental Impact Assessment Regulations and attach to such environmental audit report as well as to the environmental management programme submitted in terms of section 24N of the Act the—
  - (a) plans and report contemplated in regulation 6;
  - (b) sum of the financial provision, including an indication of the calculation of the sum; and
  - (c) auditor's report contemplated in subregulation (5).

#### **Responsibility of holder or holder of a right or permit**

13. (1) The holder or holder of a right or permit must make its determination, review and adjustment of financial provision as well as any audit of such financial provision, once submitted to the competent authority, —
- (a) available on a publically accessible website of the holder or holder of a right or permit, if such holder or holder of a right or permit has such a website;

- (b) available at the site office of the prospecting, exploration, mining or production operation; and
  - (c) accessible to the public on request.
- (2) A holder or holder of a right or permit, through its Chief Executive Officer or person appointed in a similar position, or, where liquidation proceedings have been initiated, the liquidator of the estate, is responsible for implementing the plans and report contemplated in regulation 11.
- (3) All documentation submitted to the Minister responsible for mineral resources by a holder or holder of a right or permit must be signed off by the Chief Executive Officer or person appointed in a similar position and information regarding financial aspects contained in such documentation must also be signed off by an independent auditor.

**Powers of Minister responsible for mineral resources**

14. (1) The Minister responsible for mineral resources may only grant environmental authorisation in terms of the Act after compliance by the applicant with regulation 10.
- (2) If the Minister responsible for mineral resources is not satisfied with the determination of the financial provision contemplated in regulations 6, 9 or 10 or the review, assessment or adjustment contemplated in regulations 9, 11 or 16(4) the Minister responsible for mineral resources may—
    - (a) request the applicant, holder or holder of a right or permit, at its own cost, to revise the determination or review and assessment and to adjust the financial provision to the satisfaction of the Minister responsible for mineral resources;
    - (b) request the applicant, holder or holder of a right or permit, at its own cost, to have the determination or review and assessment of the financial provision reviewed externally by another specialist or specialists and to revise the determination or assessment and to adjust the financial provision to the satisfaction of the Minister responsible for mineral resources; or
    - (c) appoint an independent assessor at the cost of the applicant, holder or holder of a right or permit, to confirm the determination or review and assessment of the financial provision or to revise the determination or review and assessment to the satisfaction of the Minister responsible for mineral resources, in consultation with the applicant or holder of a right or permit.
  - (3) The cost referred to in sub-regulation (2) is that of the applicant, holder or holder of a right or permit and must be considered as a supplementary cost as this cost may not be reserved or allocated from funds in the financial provision.
  - (4) If a holder, holder of a right or permit or liquidator fails to undertake actions identified for rehabilitation and remediation of the adverse environmental impacts as contained in the plans and report contemplated in regulation 6 and as contemplated in the Act and these Regulations, the Minister responsible for mineral resources may undertake such rehabilitation and remediation and for this purpose may use the financial provision or such portion of the financial provision for such rehabilitation and remediation or claim the cost from such holder or holder of a right or permit and the Minister responsible for mineral resources must notify the holder or holder of a right or permit 30 days prior to taking any such action.

**Timeframes for acknowledgement and consideration of plans and reports related to financial provision****15. (1) The Minister responsible for mineral resources must—**

- (a) acknowledge receipt of all plans, reports and findings of reviews and assessments submitted in terms of these Regulations within 10 days of receipt thereof; and
  - (b) assess any plans, reports and findings of determinations, reviews and assessments of a financial provision submitted in terms of these Regulations, and must approve or reject financial provision within 60 days of receipt thereof.
- (2) Where a financial provision is rejected, the Minister responsible for mineral resources must act in accordance with regulation 14(2) and must provide reasons for the rejection and indicate a timeframe not exceeding 45 days within which a revised financial provision must be resubmitted for approval.
- (3) Upon receipt of adjusted findings of a review and assessment of a financial provision, the Minister responsible for mineral resources must reconsider such adjusted findings in accordance with sub-regulation (1)(b).

**CHAPTER****TRANSITIONAL ARRANGEMENTS****Transitional arrangements**

16. (1) Any actions undertaken in terms of regulations 53 and 54 relating to financial provision in the Mineral and Petroleum Resources Development Regulations, 2004 or the Financial Provisioning Regulations, 2015 which can be undertaken in terms of a provision of these Regulations must be regarded as having been undertaken in terms of the provision of these Regulations.
- (2) Financial provision submitted in terms of regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 or the Financial Provisioning Regulations, 2015 for which approval is pending when these Regulations take effect, must be dispensed with in terms of regulations 53 and 54 the Mineral and Petroleum Resources Development Regulations, 2004 or the Financial Provisioning Regulations, 2015 as if those Regulations are still in effect.
- (3) Where an approved financial provision is under review in terms of the Mineral and Petroleum Resources Development Regulations, 2004 when these Regulations come into operation, the approved financial provision must be reviewed as if regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 are still in effect.
- (4) A holder, an applicant as contemplated in paragraph (b) of the definition of "applicant" or a holder of a right or permit who applied for such right or permit prior to the commencement of the Financial Provisioning Regulations, 2015 but who obtained such right or permit after the commencement of such Regulations, must, by no later than 19 February 2019, or, in the case of a holder of an offshore oil and gas production right, by no later than 19 February 2024, and annually thereafter-

- (a) review the plans and report contemplated in regulation 6 with a view to assessing the adequacy of the financial provision as contemplated in regulation 7 and submit such reviewed plans and report to the minister responsible for mineral resources;
  - (b) on completion of the review contemplated in paragraph (a), identify any adjustment that need to be made to the financial provision and adjust the financial provision accordingly;
  - (c) submit to the Minister responsible for mineral resources for approval the result of the assessment of the adequacy of the financial provision as well as the identified adjustment of the financial provision as contemplated in paragraphs (a) and (b), including proof of payment or amended guarantee.
- (5) Should the action contemplated in subregulation (4) indicate an excess, the amount in excess must be deferred against subsequent assessments.
- (6) A holder, an applicant as contemplated in paragraph (b) of the definition of "applicant" or a holder of a right or permit who applied for such right or permit prior to the commencement of the Financial Provisioning Regulations, 2015 but who obtained such right or permit after the commencement of such Regulations must, by no later than 19 February 2019, or, in the case of a holder of an offshore oil and gas production right, by no later than 19 February 2024, and thereafter as required by the Act, ensure that the results of the assessment of the adequacy of the financial provision and the adjustment to the financial provision contemplated in subregulation (4) are—
  - (a) audited by an independent auditor;
  - (b) included in the form of an auditor's report; and
  - (c) submitted for approval to the Minister responsible for mineral resources.
- (7) A holder, an applicant as contemplated in paragraph (b) of the definition of "applicant" or a holder of a right or permit who applied for such right or permit prior to the commencement of the Financial Provisioning Regulations, 2015 but who obtained such right or permit after the commencement of such Regulations will, until 19 February 2019, or in the case of a holder of an offshore oil and gas production right until 19 February 2024, be regarded as having complied with the provisions of these Regulations if such holder or holder of a right or permit have complied with the provisions regarding financial provisioning contained in the Mineral and Petroleum Resources Development Act, 2002.
- (8) If a holder, an applicant as contemplated in paragraph (b) of the definition of "applicant", a holder of a right or permit who applied for such right or permit prior to the commencement of the Financial Provisioning Regulations, 2015 but who obtained such right or permit after the commencement of such Regulations, or a holder of an offshore oil and gas production right, fails to comply with subregulation (4), such person will be regarded as being in non-compliance with section 24P of the Act, unless a payment agreement as contemplated in subregulations (9) to (11) has been entered into: provided that the payment agreement is not available to a mining permit holder.
- (9) If, after the assessment of the adequacy of the financial provision contemplated in subregulation (4) of these Regulations, the holder, an applicant as contemplated in paragraph (b) of the definition of "applicant", holder of a right or permit who applied for such right or permit prior to the commencement of the Financial Provisioning Regulations, 2015 but who obtained such right or permit after the commencement of those Regulations, or a holder of an offshore oil and gas production right, is not able to increase the assessed and audited financial provision to cover an identified shortfall, the Minister responsible for mineral resources may, after considering the financial stability and



operating methodology of such holder, applicant, or holder of a right or permit, enter into a payment agreement with such holder, applicant or holder of a right or permit for a period not exceeding three years to bring the financial provision in line with the assessed and audited financial provision, by using any of the financial vehicles contemplated in regulation 8 of these Regulations, and such payment agreement must be reviewed annually to ensure adequacy of the financial provision.

- (10) The Minister responsible for mineral resources may request any information that may be relevant to the decision on the payment agreement contemplated in sub-regulation (9) from the holder, applicant as contemplated in paragraph (b) of the definition of "applicant", holder of a right or permit who applied for such right or permit prior to the commencement of the Financial Provisioning Regulations, 2015 but who obtained such right or permit after the commencement of those Regulations or holder of an offshore oil and gas production right.
- (11) The payment agreement contemplated in sub-regulation (9), as well as any indication of compliance with such agreement, must be included in the annual review and assessment of the adequacy of the financial provision and must be submitted together with the plans and reports as required in terms of subregulation (4).
- (12) A holder, applicant as contemplated in paragraph (b) of the definition of "applicant", holder of a right or permit who applied for such right or permit prior to the commencement of the Financial Provisioning Regulations, 2015 but who obtained such right or permit after the commencement of such Regulations, or holder of an offshore oil and gas production right, must include the results of the assessment of the adequacy of the financial provision and the adjustment of the financial provision contemplated in this regulation in an environmental audit report required and submitted in terms of the Environmental Impact Assessment Regulations and attach to such environmental audit report the—
  - (a) plans and report contemplated in subregulation 4(a);
  - (b) sum of the financial provision, including an indication of the calculation of the sum; and
  - (c) auditor's report contemplated in subregulation (6).

## CHAPTER 4

### GENERAL MATTERS

#### Offences

- 17. (1) An applicant commits an offence if that person contravenes or fails to comply with regulation 4, 5, 6, 7, 9, 10, or 12(8) of these Regulations.
- (2) A holder of a right or permit commits an offence if that person contravenes or fails to comply with regulation 4, 5, 6, 7, 9, 11, 12 or 13 of these Regulations.
- (3) A holder commits an offence if that person contravenes regulation 4, 5, 6, 7, 13, 16(4), 16(6) or 16(12).
- (4) A holder of a right or permit who applied for such right or permit prior to the commencement of the Regulations but who obtained such right or permit after the commencement of the Regulations and an applicant as contemplated in paragraph (b) of the definition of "applicant" commits an offence if that person contravenes regulation 16(4), 16(6) or 16(12).

**Penalties**

18. A person convicted of an offence in terms of regulation 17 of these Regulations, is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.

**Repeal of Financial Provisioning Regulations, 2015**

19. The Financial Provisioning Regulations, 2015 is hereby repealed.

**Short title and commencement**

20. These regulations are called the Financial Provisioning Regulations, 2017 and commence on the date of publication in the *Gazette*.



## APPENDIX 1

### METHODOLOGY FOR CALCULATION OF FINANCIAL PROVISION FOR NEW DEVELOPMENT

1. This methodology must be used where no disturbance has been effected on the site by the holder or holder of the right or permit.
2. **Assumptions made for purposes of calculating**
  1. A third party will be employed to undertake rehabilitation and remediation work;
  2. Mine infrastructure asset salvage value has not been taken into account;
  3. No further provisional and general costs or contingencies are to be included as the addition of CPI escalation on actual cost for 3 years compensates for these costs;
  4. The financial provision liability associated with final closure or residual environmental impacts may not be deferred against assets at mine closure or mine infrastructure salvage value; and
  5. Any reference to a period of 3 years must be read as reference to a 1 year period for instances contemplated in regulation 7(1) of these Regulations.

### 3. Costing for final rehabilitation, decommissioning and mine closure

#### 3.1 Description:

The costing must reflect the total cost to remediate disturbances that will occur in Year 0. The costing must reflect actual market related costs based on prevailing rates exclusive of value added tax (VAT). This is the Year 0 cost and referred to as Total 1. Once any disturbance has commenced on site, the site is classified as an existing operation and subsequent closure costs will be calculated as for existing sites.

#### 3.2 Steps:

1. Calculate the total current premature closure = Year 0.
2. Year 0 = Total 1.

### 3.3 Costing for residual environmental impacts which will occur in the future

#### 3.3.1 Description:

The costing must reflect the Net Present Value (NPV) based on prevailing rates of future residual environmental impacts due to disturbance of Year 0. This is the Year 0 cost for residual environmental impacts. This cost must be considered in relation to the probability of occurrence as identified in the environmental risk assessment report and is the cost required to mitigate the risk to acceptable levels. The Year 0 cost is the financial provision for residual environmental impacts that may occur in the future. This is Total 2.

#### 3.3.2 Steps:

1. Calculate the NPV of future residual environmental impacts = Year 0.
2. Year 0 = Total 2.

### 3.4 Calculate the sum of the financial provision

#### 3.4.1 Description:

Add Total 1 for final rehabilitation, decommissioning and mine closure to Total 2 for residual environmental impacts which may occur in the future. Thus Total 1 + Total 2 = Financial Provision.

#### 3.4.2 Steps:

Total 1 + Total 2 = Financial Provision

## **APPENDIX 2**

### **METHODOLOGY FOR CALCULATION OF FINANCIAL PROVISION FOR EXISTING DEVELOPMENT**

1. This methodology must be used where disturbance has been effected on the site by the holder or holder of the right or permit.

#### **2. Assumptions made for purposes of calculating**

1. A third party will be employed to undertake rehabilitation and remediation work;
2. Mine infrastructure asset salvage value has not been taken into account;
3. No further provisional and general costs or contingencies are to be included as the addition of CPI escalation on actual cost for 3 years compensates for these costs;
4. The financial provision liability associated with final closure or residual environmental impacts may not be deferred against assets at mine closure or mine infrastructure salvage value; and
5. Any reference to a period of 3 years must be read as reference to a 1 year period for instances contemplated in regulation 7(1) of these Regulations.

#### **3. Costing for final rehabilitation, decommissioning and mine closure**

##### **3.1 Description:**

The costing must reflect the total current premature closure cost. The total premature closure cost must include all backlog, post-closure management and monitoring requirements as well as all known current residual environmental impacts (i.e residual environmental impacts that will manifest immediately at premature closure). The costing must reflect actual market related costs based on prevailing rates exclusive of value added tax (VAT). This is the Year 0 or current snapshot cost. The Year 0 cost is then multiplied by CPI plus 2% for a period of 3 years. The Year 3 cost is the financial provision for the final rehabilitation, decommissioning and mine closure. This is Total 1. (Preliminary and general costs, and contingencies are excluded as the additional CPI escalation for 3 years compensate for these costs.)

##### **3.2 Steps:**

1. Calculate the total current premature closure = Year 0.
2. Escalate Year 0 with estimated CPI for following year = Year 1.
3. Escalate Year 1 with estimated CPI for following year = Year 2.
4. Escalate Year 2 with estimated CPI for following year = Year 3.
5. Year 3 = Total 1.

#### **3.3 Costing for residual environmental impacts which will occur in the future**

##### **3.3.1 Description:**

The costing must reflect the Net Present Value (NPV) based on prevailing rates of future residual environmental impacts due to impacts of disturbance in Year 0. This is the Year 0 cost for residual impacts. This cost must be considered in relation to the probability of occurrence as identified in the environmental risk assessment report and is the cost required to mitigate the risk to acceptable levels. The Year 0 cost is then multiplied by CPI plus 2% for a period of 3 years. The Year 3 cost is the financial provision for residual environmental impacts that may occur in the future. This is Total 2.

##### **3.3.2 Steps:**

1. Calculate the NPV of future residual environmental impacts = Year 0.

2. Escalate Year 0 with estimated CPI for following year = Year 1.
3. Escalate Year 1 with estimated CPI for following year = Year 2.
4. Escalate Year 2 with estimated CPI for following year = Year 3.
5. Year 3 = Total 2.

### **3.4 Calculate the sum of the financial provision**

#### **3.4.1 Description:**

Add Total 1 for final rehabilitation, decommissioning and mine closure to Total 2 for residual environmental impacts which may occur in the future. Thus Total 1 + Total 2 = Financial Provision.

#### **3.4.2 Steps:**

Total 1+ Total 2 = Financial Provision

## APPENDIX 3

## FINANCIAL GUARANTEE

## (BANK OR GUARANTOR'S LETTER HEAD)

MINISTER RESPONSIBLE FOR MINERAL RESOURCES (or his/her successor)

.....

.....

.....

.....

Sir

**DEMAND GUARANTEE FOR THE COMPLIANCE WITH THE STATUTORY OBLIGATION RELATED TO DETERMINING AND MAKING OF FINANCIAL PROVISION FOR PROSPECTING, EXPLORATION, MINING OR PRODUCTION OPERATIONS**

1. In relation to the responsibility, in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended and/or replaced from time to time, ("the Act"),..... (the "holder" or "holder of a right or permit") is required to determine and make the prescribed financial provision to undertake rehabilitation and remediation of the adverse environmental impacts of prospecting, exploration or extraction, including primary processing, of a mineral or petroleum resource to the satisfaction of the Minister responsible for mineral resources in accordance with the provisions of the Financial Provisioning Regulations, 2015, promulgated in terms of the Act, or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations or deals with similar or related matters for such operations known as .....and situated at (give full description of property) ..... or any applicable part thereof (the "Mine"), and we, in our capacity as duly authorised representatives of the bank / financial institution as Guarantor, confirm that the aggregate maximum amount of

R..... (.....) (the "Guaranteed Sum") is available to the Minister responsible for mineral resources for the purpose of executing the rehabilitation and remediation actions identified in plans used to determine the prescribed financial provision for such operations as contemplated in the Financial Provisioning Regulations, 2015, or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations.

2. Subject to compliance by the Minister responsible for mineral resources with the requirement to give notice as contained in the Financial Provisioning Regulations, 2015, or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations, the Guarantor hereby unconditionally undertakes, as a principal obligation, to pay to the Minister responsible for mineral resources the Guaranteed Sum by no later than 5 working days (Mondays

to Fridays, excluding weekends and public holidays in the Republic of South Africa) after receipt of a written claim from the Minister responsible for mineral resources (or made on behalf of the Minister responsible for mineral resources) to do so.

2.1 The claim must state that the holder or holder of a right or permit:

2.1.1 has failed to execute the actions identified in the final rehabilitation, decommissioning and closure plan used to determine the financial provision in accordance with its terms, to the satisfaction of the Minister responsible for mineral resources and has failed to remedy the failure after having received notice to do so in terms of the Financial Provisioning Regulations, 2015, or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations; and/or

2.1.2 has become subject to an order of court placing him/her/it in or under sequestration, liquidation or bankruptcy (in any case whether voluntary or compulsory, provisional or final) or any analogous order is granted or resolution taken in any jurisdiction in relation to the holder or holder of a right or permit; or

2.3 A claim under this guarantee may be instituted by the Minister responsible for mineral resources at any stage commencing from the date of signature of this guarantee and must be delivered to the Guarantor, together with the original guarantee, or by complying with paragraph 4(a) if the original guarantee is lost, at the Guarantor's address as provided herein.

2.4 Where relevant, this guarantee is issued as a replacement of Guarantee No. \_\_\_\_\_ issued by \_\_\_\_\_ (the Guarantor) on \_\_\_\_\_ for the amount of R \_\_\_\_\_ and does not create any further obligations for the Guarantor other than set out in this replacement guarantee (scrap if not applicable).

3. This guarantee is not negotiable nor transferable, and –

3.1 must be returned to the Guarantor when giving account to the Guarantor in terms of clause 3 above or, if the original guarantee has been lost, must be accompanied by a statement that the applicable document cannot be located and that you indemnify the Guarantor against any direct loss that it may suffer (other than as a result of its own negligent or wilful act or omission) as a direct result of such original document not being returned to it;

3.2 shall lapse—

(i) after the bank or financial institution has given effect to clause 2 or 3; or

(ii) on the granting of a closure certificate in terms of the Mineral and Petroleum Resources Development Act, 2002 in respect of the whole of the operations; and

3.3 shall not be construed as placing any other responsibility on the Guarantor other than the paying of the Guaranteed Sum.

4. The Guarantor reserves the right to withdraw from this guarantee after having given you, the Minister responsible for mineral resources, the Minister responsible for

environmental affairs and the Minister of Finance at least 4 months' written notice in advance, by registered mail, of his/her/its intention to do so.

5. The Guarantor will pay on demand under this guarantee without regard to any claim or dispute of any nature which any party may allege.
6. This Guarantee shall be governed by the laws of the Republic of South Africa. The courts of the Republic of South Africa shall have sole jurisdiction.

Yours faithfully

.....

(SIGNATURE)

(SIGNATURE)

.....

(NAME)

(NAME)

.....

(DESIGNATION)

(DESIGNATION)

Who hereby warrants his/her authority

Who hereby warrants his/her authority

ADDRESS: .....

.....

.....

.....

DATE: .....

**PLEASE NOTE:** (1) No amendments and/or additions to the terms or conditions of this guarantee will be accepted.

(2) The address of the addressee of this guarantee must be stated clearly.

(3) This guarantee must be returned to:

.....

.....

## APPENDIX 4

### DEED OF TRUST

Made and entered into by and between

\_\_\_\_\_

*(hereinafter referred to as the "Founder")*

AND

\_\_\_\_\_

*(the name(s) of the Trustee(s))*

#### 1. DEFINITIONS

In this deed, the following expressions have the meaning respectively set opposite them unless it appears otherwise from the context:

- 1.1 "the Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations thereunder, being *inter alia*:
  - 1.1.1 National Environmental Management Act, 1998 (Act No. 107 of 1998);
  - 1.1.2 Environmental Impact Assessment Regulations, 2014;
  - 1.1.3 Financial Provisioning Regulations, 2015;
  - 1.1.4 Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
  - 1.1.5 National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
  - 1.1.6 National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
  - 1.1.7 National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);
  - 1.1.8 National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);
  - 1.1.9 any applicable Land Use Planning Ordinance or similar instrument;
  - 1.1.10 Companies Act, 2008 (Act No. 71 of 2008); and
  - 1.1.11 Income Tax Act, 1962 (Act No. 58 of 1962) (the IT Act),

including all amendments and/or replacements of any such legislation or subordinate legislation, and any other legislation and/or regulations which may be imposed from time to time which give rise to obligations relating to rehabilitation, decommissioning and closure measures needed to address environmental impacts associated with the mining activities;



and any reference to any section of any legislation or regulations shall include a reference to that section as amended or replaced by any other section which regulates substantially the same subject matter;

- 1.2 "the beneficiary" means \_\_\_\_\_ who is a person contemplated in section 37A(1)(d) of the IT Act;
- 1.3 "the Commissioner" means the Commissioner for the South African Revenue Service as referred to in the IT Act;
- 1.4 "the Department" means the Department responsible for mineral resources or its successor from time to time;
- 1.5 "the Founder" means \_\_\_\_\_;
- 1.6 "the funds" means the funds of the Trust and the ring fenced funds in the particular account of the beneficiary should there be more than one beneficiary;
- 1.7 "the Minister" means the Minister of Mineral Resources or any person to whom the responsibility has been delegated or assigned pursuant to any law for ensuring that, within the Province(s) concerned, adequate financial provision is made for the fulfilment of the Statutory Obligations;
- 1.8 "the Trust" means the \_\_\_\_\_ Rehabilitation Trust, a Trust as envisaged in section 37A of the IT Act and created in accordance with clause 3 hereof;
- 1.9 "exploration operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
- 1.10 "mining operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act No. 28 of 2002;
- 1.11 "production operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
- 1.12 "prospecting operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
- 1.13 "Statutory Obligations" mean the obligations of the beneficiary to rehabilitate, decommission and close its operation and to provide financial provision as prescribed in the "Financial Provisioning Regulations, 2015" promulgated in terms of the National Environmental Management Act No. 107 of 1998 and as amended from time to time or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations or deals with similar or related matters; and
- 1.14 "the Trustees" means \_\_\_\_\_ and \_\_\_\_\_, who have agreed to be the first trustees of the \_\_\_\_\_ REHABILITATION TRUST, and any other persons who may be properly appointed trustees from time to time.

## 2. RECORDAL

- 2.1 The beneficiary is or is to be, as at the date of this deed of trust, engaging in prospecting, exploration, mining or production operations as authorised by the Minister responsible for mineral resources under permits or rights issued in terms of the Mineral and Petroleum Resources Development Act, 2002.
- 2.2 The beneficiary is legally obliged, at the time of and after the discontinuation of the mining operations to carry out rehabilitation and closure operations to prevent and control pollution at its mining operations as envisaged in terms of the Acts and Regulations and to bring the area back to an agreed environmental state and to bear the cost of such rehabilitation, prevention and control. The costs required for this purpose must be provided for in terms of the Financial Provisioning Regulations, 2015 and the beneficiary must comply with the Statutory Obligations.
- 2.3 For the purpose of discharging the beneficiary's Statutory Obligations, the Founder has constituted the Trust to receive, hold and apply funds as may be contributed by the Founder and the beneficiary from time to time for rehabilitation upon premature closure, decommissioning and final closure, and post closure coverage of any residual environmental impacts on the area covered in terms of any permit, right, to restore one or more areas to their natural or predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development.
- 2.4 The Founder constitutes the trust for the benefit of the beneficiary and for this purpose wishes to donate \_\_\_\_\_ to the Trustees of the Trust.

## 3. THE TRUST AND ITS OBJECTS

- 3.1 There is hereby created a Trust called the \_\_\_\_\_ **REHABILITATION TRUST.**
- 3.2 The sole object of the Trust is to receive contributions and hold and apply its assets solely for the purposes contemplated in section 37A(1)(a) or section 37A((3) or (4) of the IT Act and the Statutory Obligations.

## 4. DONATION

- 4.1 The Founder hereby irrevocably donates the sum of \_\_\_\_\_ to \_\_\_\_\_ the Trustees in trust, who in their capacity as such, hereby accepts such donation for the purpose and subject to the conditions of this deed.
- 4.2 The donation made in terms of clause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this deed.

## 5. ADMINISTRATION OF THE TRUST

- 5.1 The Trustees shall administer the Trust.
- 5.2 The Trustees shall not receive any remuneration from the Trust for their services, unless the Trustee is a professional fiduciary services company, in which event it may be paid its normal commercial rates for the provision of trustee services.
- 5.3 There shall at all times be no less than two but no more than \_\_\_\_\_ Trustees, who shall be natural persons unless the Trustee appointed is a professional fiduciary services

company, in which event such company may be the sole corporate Trustee ("the sole corporate trustee").

- 5.4 No person may be a Trustee if he or she would not be eligible to be a director of a company under the Companies Act No. 71 of 2008, or has been convicted of any offence involving dishonesty.
- 5.5 The Trustees shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.
- 5.6 The Trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder.

## **6. RESIGNATION OF TRUSTEES**

- 6.1 Should a Trustee resign then the remaining Trustees shall immediately appoint a Trustee to fill that vacancy. Should there be a sole corporate Trustee and should such sole Trustee wish to resign, it may do so on 30 days' notice in writing to the Founder and the Minister responsible for mineral resources. In such event the Founder shall appoint a new corporate Trustee, or at least two or more natural persons as Trustees, by no later than the date of resignation of the sole corporate Trustee.
- 6.2 A Trustee may resign at any time on giving 30 days' notice in writing to the remaining Trustees of his or her intention to do so and shall in any case be deemed to have vacated his or her office if he or she is no longer employed by the beneficiary or any of its subsidiaries.
- 6.3 A Trustee shall be deemed to have vacated his/her office if he/she is or becomes ineligible to be a Trustee under this deed for any reason.

## **7. CHAIRMAN AND VOTING**

- 7.1 The Trustees shall from time to time nominate one of their number to be Chairman of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a Trustee.
- 7.2 Should the Chairman be absent at any meeting of the Trustees, the Trustees present shall appoint one of their number as Chairman to preside at that meeting.
- 7.3 Questions arising at meeting of Trustees shall be decided by a simple majority of votes each Trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote.
- 7.4 The provisions of this clause 7 shall be held in abeyance if there is a sole corporate Trustee.

## **8. SECRETARY**

The Trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one Trustee, convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

## **9. MEETINGS AND QUORUM**

- 9.1 The Trustees shall meet from time to time to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present. Reasonable notice of every such meeting shall be given to each Trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held in \_\_\_\_\_ Meetings may be held by telephone or any other electronic medium, provided that each Trustee is able properly to participate in the proceedings using such medium.
- 9.2 A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.
- 9.3 The provisions of this clause 9 shall be held in abeyance if there is a sole corporate Trustee, which conducts the business of the Trust as it may deem fit, having regard to the requirements of this deed and the Acts and Regulations.

## **10. TRUSTEES' LIABILITY**

- 10.1 Subject to applicable law, including but not limited to the Trust Property Control Act No. 57 of 1988 (or any amendment or replacement thereof) the Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through the wilful misconduct or gross negligence of any Trustee(s), in which event the Trustee(s) concerned, and not all the Trustees, shall be jointly and severally liable for any such loss.
- 10.2 The Trustees shall have no responsibility or liability for the efficacy of the measures taken by the beneficiary to fulfil the Statutory Obligations or for the sufficiency of contributions and amounts paid to the Trust in terms of clause 14.
- 10.3 The beneficiary hereby indemnifies the Trustees against any claims made against the Trustees arising from the loss or depreciation referred to in this clause 10 in respect of its monies (other than as a result of wilful misconduct or gross negligence on the part of the Trustees) or arising as a result of the measures taken the beneficiary to fulfil the Statutory Obligations proving to be ineffective and/or the contributions and/or amounts obtained from it proving to be insufficient.

## **11. SECURITY BY THE TRUSTEES**

The Trustees shall not be required to lodge security with the Master of the High Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

## **12. TRUSTEES' POWERS**

- 12.1 The Trustees shall have general control over the funds of the Trust and shall strive to attain the sole object which the Trust is established.
- 12.2 The Trustees shall have plenary powers to enable them to achieve the sole object of the Trust.
- 12.3 The Trustees shall receive, hold, and apply the donation in clause 4 and such amounts as may be contributed to the Trust in terms of this deed, together with the net income thereon. Except as may be otherwise provided herein, the Trustees shall not distribute any of the Trust's profits

or gains to any person and shall use the funds solely for the object for which the Trust has been established.

12.4 The Trustees in their personal capacity shall not engage in any trade, undertaking or business of the Trust, nor shall any of them participate in any of the affairs of the Trust, or provide any financial assistance or services or facilities other than is required to fulfil their role as Trustee.

12.5 The management of the affairs and all the powers of the Trust shall vest in the Trustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:

12.5.1 to deposit with any bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990) and/or to invest, realise and re-invest the contributions made to the Trust and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall decide provided that they shall not make investments in instruments other than those contemplated in section 37A(2) of the IT Act;

12.5.2 to appropriate firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause 14 for the measures taken for compliance with the Statutory Obligations of the beneficiary;

12.5.3 to appropriate contributions made by more than one beneficiary to that beneficiary's account and use it, in the first place, for purposes of that beneficiary's Statutory Obligations in respect of the relevant mine and, if there is a surplus, after the full and final discharge of all the Statutory Obligations, in respect of that beneficiary's other mining operations;

12.5.3 to institute any legal action for the recovery of monies owing to the Trust and to prosecute, compromise, settle or withdraw any such action;

12.5.4 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgement debtors;

12.5.5 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust; and

12.5.6 generally to perform all acts connected with any of the Trust's affairs;

provided that the Trustees shall not be entitled on behalf of the Trust to (i) incur any indebtedness of any nature (including through the use of any negative mark to market position in relation to any derivative instrument) save for non-interest bearing trade credit incurred in the ordinary course of the Trust's business or (ii) encumber the Trust assets or any of them in any manner whatsoever.

### **13. TRUST'S BOOKS OF ACCOUNT AND ACCOUNTING PROCEDURES**

13.1 The Trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.

13.2 The financial statements of the Trust for each financial year (which shall be reckoned from 1 March to the end of February) shall be forwarded by the Trustees to the beneficiary and to the



Commissioner and the Minister within six calendar months after the end of each financial year of the Trust.

- 13.3 The Trustees shall open a banking account in the name of the Trust, which shall be operated upon by the joint signatures of two of the Trustees and the Secretary, or another duly appointed authorised joint signatory.
- 13.4 All documents required to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.
- 13.5 All costs charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expenses incurred in any financial year shall be paid or provided for out of the income of the Trust in that financial year. The Founder hereby undertakes to pay or procure the payment of any such costs, charges and expenses which cannot be borne out of the income of the Trust. The Founder shall have no claim against the Trust for any such costs, charges and expenses so paid.
- 13.6 The balance, if any, of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be net income for the financial year but if such costs, charges and expenses exceed the income, then the excess shall be the net loss for that financial year.
- 13.7 Such net income or net loss, as the case may be, forms part of the Trust. Should there be more than one beneficiary, the net income or net loss shall be allocated proportionally to each beneficiary.
- 13.8 The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the Trust solely for investment in accordance with clause 12.5.1 and the object for which the Trust has been established.
- 13.9 No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with section 37A(3) or (4) of the IT Act.

#### **14. COST OF COMPLIANCE WITH THE STATUTORY OBLIGATIONS AND CONTRIBUTIONS TO THE TRUST**

- 14.1 On an annual basis, the contribution to be made to the Trust (if any) shall be calculated by the beneficiary in accordance with the requirements of the Statutory Obligations.
- 14.2 The Founder shall, or shall procure that the beneficiary shall, before the end of its financial year concerned, pay such funds into the bank account of the Trust as necessary to comply with the financial provision approved by the Minister of mineral resources required for remediation, rehabilitation, decommissioning and closure of operations at the end of life of operations. The undertakings by the Founder in this clause 14 shall be stipulations in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.

#### **15. COMPLIANCE WITH THE STATUTORY OBLIGATIONS**

- 15.1 The Trustees undertake to ensure that funds of the Trust shall be used only to allow the beneficiary properly to fulfil the Statutory Obligations. The funds will be placed at the disposal of such beneficiary to carry out the Statutory Obligations as and when so required. In the event that, at any time, the

Minister of mineral resources gives notice to the beneficiary and the Trustees specifying the Statutory Obligations relating to the remediation, rehabilitation decommissioning and closure of operations that have not been fulfilled and are required to be fulfilled, and (i) the beneficiary is insolvent, is or has been provisionally or finally liquidated or sequestrated, has been or is placed under supervision for business rescue proceedings, is financially distressed (as defined the Companies Act 71 of 2008, as amended from time to time), or (ii) the Trustees refuse to apply the funds of the Trust (or any applicable part thereof) to allow the beneficiary to fulfil the Statutory Obligations within 3 months of such notice from the Minister of mineral resources or (iii) the beneficiary, having been placed in funds by the Trustees, fails to apply such funds or allow their application in the approved manner to fulfil the Statutory Obligations (or any applicable part thereof) within 3 months of such notice from the Minister of mineral resources, then the Trustees shall, within 30 days of receipt by them of a notice to such effect from the Minister of mineral resources, pay over the funds of the Trust, or such portion thereof as from time to time as is notified to the Trustees by the Minister of mineral resources, to the Minister of mineral resources or his/her nominee for the purpose of allowing the Statutory Obligations to be fulfilled by the Minister of mineral resources or his/her nominee in place of the beneficiary. The undertakings in this clause shall be stipulations in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.

15.2 In fulfilling the before mentioned obligation the amount made so available by the Trustees will be limited to funds held by the Trust.

15.3 Any provision of funds by the Trustees must be approved in advance in writing by the Minister responsible for mineral resources.

## **16. CESSATION OF MINING ACTIVITIES AND SHORTFALL OR EXCESS**

16.1 Should the beneficiary decide to terminate its mining operations (other than a temporary cessation of such operations) at any mine or part of any mine and/or should the beneficiary be placed into liquidation (whether provisional or final) prior to it having complied with all of the Statutory Obligations, the Founder shall, or procure that the beneficiary shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations and within one month of the beneficiary having been placed in liquidation (whether provisional or final), have final estimates prepared of the probable cost of compliance with such outstanding Statutory Obligations, including the cost should a third party be required to effect the measures required to meet the Statutory Obligations relating to remediation, rehabilitation, decommissioning and closure of operations, including providing for the remediation and management of residual environmental impacts, as well as including the pumping and treatment of polluted mine water, which shall be certified and/or approved as required in the Statutory Obligations.

16.2 The undertakings in this clause 16 are stipulations in favour of the Minister responsible for mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.

## **17. TERMINATION OF THE TRUST**

17.1 The Trust may only be terminated after all the beneficiary's Statutory Obligations in respect of all its mining operations at any time have been met to the satisfaction of the Minister of mineral resources.



- 17.2 Should any amount and/or other assets remain after all the Statutory Obligations in respect of all the beneficiary's mining operations at any time have been met to the satisfaction of the Minister of mineral resources including remediation of residual environmental impacts, including the pumping and treatment of polluted mine water, those amounts and other assets should be transferred to a company or a trust which fulfils the requirements of section 37A(1) of the IT Act, as amended or replaced from time to time.

## 18. VARIATION OF THIS DEED

The provisions of this deed may from time to time be amended by a resolution of the Trustees only with the prior written approval of each of the beneficiary and the Minister of mineral resources and such variation must be aligned with the provisions of the IT Act.

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Founder.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of  
\_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of  
\_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

**APPENDIX 5****MINIMUM CONTENT OF AN ANNUAL REHABILITATION PLAN****1. Objective of the annual rehabilitation plan**

The objective of the annual rehabilitation plan is to—

- (a) review concurrent rehabilitation and remediation activities already implemented;
- (b) establish rehabilitation and remediation goals and outcomes for the forthcoming 12 months, which contribute to the gradual achievement of the post-mining land use, closure vision and objectives identified in the final rehabilitation, decommissioning and mine closure plan;
- (c) establish a plan, schedule and budget for rehabilitation for the forthcoming 12 months;
- (d) identify and address shortcomings experienced in the preceding 12 months of rehabilitation; and
- (e) evaluate and update, based on market related figures, the cost of rehabilitation for the 12 month period and for closure, for purposes of supplementing the financial provision guarantee or other financial provision instrument.

**2. Content of the annual rehabilitation plan**

The annual rehabilitation plan will be relevant for a period of 1 year, after which the plan will be updated by the holder and holder of a right or permit to reflect progress relating to rehabilitation and remediation activities in the preceding 12 months and to establish a plan, schedule and budget for the forthcoming 12 months. The annual rehabilitation plan must contain information that defines concurrent rehabilitation and remediation activities for the forthcoming 12 months and how these relate to the operations' closure vision, as detailed in the final rehabilitation, decommissioning and mine closure plan, must indicate what closure objectives and criteria are being achieved through the implementation of the plan, must be measurable and auditable and must include—

- (a) details of the—
  - (i) person or persons that prepared the plan;
  - (ii) professional registrations and experience of the person or persons;
  - (iii) timeframes of implementation of the current, and review of the previous rehabilitation activities;
- (b) the pertinent environmental and project context relating directly to the planned annual rehabilitation and remediation activity;
- (c) results of monitoring of risks identified in the final rehabilitation, decommissioning and mine closure plan with a view to informing rehabilitation and remediation activities;
- (d) an identification of shortcomings experienced in the preceding 12 months;

- (e) details of the planned annual rehabilitation and remediation activities or measures for the forthcoming 12 months, including those which will address the shortcomings contemplated in (d) above or which were identified from monitoring in the preceding 12 months, and including—
- (i) if no areas are available for annual rehabilitation and remediation concurrent with mining, an indication to that effect and motivation why no annual rehabilitation or remediation can be undertaken;
  - (ii) where areas are available for annual rehabilitation and remediation concurrent with mining, annual rehabilitation and remediation activities related to previous disturbance or expected planned impacts and disturbance, as per the mine works programme, in the period under consideration, which should be tabulated and must indicate, but not necessarily be limited to,—
    - (aa) nature or type of activity and associated infrastructure;
    - (bb) planned remaining life of the activity under consideration;
    - (cc) area already disturbed or planned to be disturbed in the period of review;
    - (dd) percentage of the already disturbed or planned to be disturbed area available for concurrent rehabilitation and remediation activities;
    - (ee) percentage of the already disturbed or planned to be disturbed area available as per (dd) and on which concurrent rehabilitation and remediation can be undertaken;
    - (ff) notes to indicate why total available or planned to be available area differs from area already disturbed or planned to be disturbed;
    - (gg) notes to indicate why concurrent rehabilitation will not be undertaken on the full available or planned to be available area;
    - (hh) details of rehabilitation activity planned on this area for the period of review;
    - (ii) the pertinent closure objectives and performance targets that will be addressed in the forthcoming year, which objectives and targets are aligned to the final rehabilitation, decommissioning and mine closure plan;
    - (jj) description of the relevant closure design criteria adopted in the annual rehabilitation and remediation activities and the expected final land use once all rehabilitation and remediation activities are complete for the activity or aspect; and
  - (iii) a site plan indicating at least the total area disturbed, area available for rehabilitation and remediation and the area to be rehabilitated or remediated per aspect or activity;
- (f) a review of the previous year's annual rehabilitation and remediation activities, indicating a comparison between activities planned in the previous year's annual rehabilitation and remediation plan and actual rehabilitation and remediation implemented, which should be tabulated and as a minimum contain—

- (aa) area planned to be rehabilitated and remediated during the plan under review;
  - (bb) actual area rehabilitation or remediated; and
  - (cc) if the variance between planned and actual exceeds 15%, motivation indicating reasons for the inability to rehabilitate or remediate the full area; and
- (g) costing, based on market related figures, including—
  - (i) an explanation of the closure cost methodology;
  - (ii) auditable calculations of costs per activity or infrastructure;
  - (iii) cost assumptions; and
  - (iv) monitoring and maintenance costs likely to be incurred both during the period of the annual rehabilitation plan and those that will extend past the period of the final rehabilitation, decommissioning and mine closure plan, on condition that the monitoring and maintenance costs included in previous annual rehabilitation plans must be accumulated into subsequent versions of the annual rehabilitation plan until such time as the monitoring and maintenance obligation is discharged.

## APPENDIX 6

### MINIMUM CONTENT OF A FINAL REHABILITATION, DECOMMISSIONING AND MINE CLOSURE PLAN

#### 1. Objective of the final rehabilitation, decommissioning and mine closure plan

The objective of the final rehabilitation, decommissioning and mine closure plan, which must be measurable and auditable, is to identify a post-mining land use that is feasible through—

- (a) providing the vision, objectives, targets and criteria for final rehabilitation, decommissioning and closure of the project;
- (b) outlining the design principles for closure;
- (c) explaining the risk assessment approach and outcomes and link closure activities to risk rehabilitation;
- (d) detailing the closure actions that clearly indicate the measures that will be taken to mitigate and/or manage identified risks and describes the nature of residual risks that will need to be monitored and managed post closure;
- (e) committing to a schedule, budget, roles and responsibilities for final rehabilitation, decommissioning and closure of each relevant activity or item of infrastructure;
- (f) identifying knowledge gaps and how these will be addressed and filled;
- (g) detailing the full closure costs for the life of project, based on market related figures and at increasing levels of accuracy as the project develops and approaches closure in line with the final land use proposed; and
- (h) outlining monitoring, auditing and reporting requirements.

#### 2. Content of the final rehabilitation, decommissioning and mine closure plan

The final rehabilitation, decommissioning and mine closure plan must be measurable and auditable, must take into consideration the proposed post-mining end use of the affected area and must contain information that is necessary for the definition of the closure vision, objectives and design and relinquishment criteria, indicating what infrastructure and activities will ultimately be decommissioned, closed, removed and remediated and the risk drivers determining actions, indicating how the closure actions will be implemented to achieve closure relinquishment criteria and indicating monitoring, auditing and reporting requirements.

The final rehabilitation, decommissioning and mine closure plan must be measurable and auditable and must include—

- (a) details of—
  - (i) the person or persons that prepared the plan;
  - (ii) the professional registrations and experience of the preparers;

- (b) the context of the project, including—
  - (i) material information and issues that have guided the development of the plan;
  - (ii) an overview of—
    - (aa) the environmental context, including but not limited to air quality, quantity and quality of surface and groundwater, land, soils and biodiversity; and
    - (bb) the social context that may influence closure activities and post-mining land use or be influenced by closure activities and post-mining land use;
  - (iii) stakeholder issues and comments that have informed the plan;
  - (iv) the mine plan and schedule for the full approved operations, and must include—
    - (aa) appropriate description of the mine plan;
    - (bb) drawings and figures to indicate how the mine develops;
    - (cc) what areas are disturbed; and
    - (dd) how infrastructure and structures (including ponds, residue stockpiles etc.) develops during operations;
- (c) findings of an environmental risk assessment leading to the most appropriate closure strategy, including—
  - (i) a description of the risk assessment methodology including risk identification and quantification, to be undertaken for all areas of infrastructure or activity or aspects for which a holder of a right or permit has a responsibility to mitigate an impact or risk at closure;
  - (ii) an identification of indicators that are most sensitive to potential risks and the monitoring of such risks with a view to informing rehabilitation and remediation activities;
  - (iii) an identification of conceptual closure strategies to avoid, manage and mitigate the impacts and risks;
  - (iv) a reassessment of the risks to determine whether, after the implementation of the closure strategy, the residual risk has been avoided and / or how it has resulted in avoidance, rehabilitation and management of impacts and whether this is acceptable to the mining operation and stakeholders; and
  - (v) an explanation of changes to the risk assessment results, as applicable in annual updates to the plan;
- (d) design principles, including—
  - (i) the legal and governance framework and interpretation of these requirements for the closure design principles;



- (ii) closure vision, objectives and targets, which objectives and targets must reflect the local environmental and socio-economic context and reflect regulatory and corporate requirements and stakeholder expectations;
- (iii) a description and evaluation of alternative closure and post closure options where these exist that are practicable within the socioeconomic and environmental opportunities and constraints in which the operation is located;
- (iv) a motivation for the preferred closure action within the context of the risks and impacts that are being mitigated;
- (v) a definition and motivation of the closure and post closure period, taking cognisance of the probable need to implement post closure monitoring and maintenance for a period sufficient to demonstrate that relinquishment criteria have been achieved;
- (vi) details associated with any on-going research on closure options;
- (vii) a detailed description of the assumptions made to develop closure actions in the absence of detailed knowledge on site conditions, potential impacts, material availability, stakeholder requirements and other factors for which information is lacking;
- (e) a proposed final post-mining land use which is appropriate, feasible and possible of implementation, including—
  - (i) descriptions of appropriate and feasible final post-mining land use for the overall project and per infrastructure or activity and a description of the methodology used to identify final post-mining land use, including the requirements of the operations stakeholders;
  - (ii) a map of the proposed final post-mining land use;
- (f) closure actions, including—
  - (i) the development and documenting of a description of specific technical solutions related to infrastructure and facilities for the preferred closure option or options, which must include all areas, infrastructure, activities and aspects both within the mine lease area and off of the mine lease area associated with mining for which the mine has the responsibility to implement closure actions;
  - (ii) the development and maintenance of a list and assessment of threats and opportunities and any uncertainties associated with the preferred closure option, which list will be used to identify and define any additional work that is needed to reduce the level of uncertainty;
- (g) a schedule of actions for final rehabilitation, decommissioning and closure which will ensure avoidance, rehabilitation, management of impacts including pumping and treatment of extraneous water —
  - (i) linked to the mine works programme, if greenfields, or to the current mine plan, if brownfields;
  - (ii) including assumptions and schedule drivers; and

- (iii) including a spatial map or schedule, showing planned spatial progression throughout operations;
- (h) an indication of the organisational capacity that will be put in place to implement the plan, including—
  - (i) organisational structure as it pertains to the plan;
  - (ii) responsibilities;
  - (iii) training and capacity building that may be required to build closure competence;
- (i) an indication of gaps in the plan, including an auditable action plan and schedule to address the gaps;
- (j) relinquishment criteria for each activity or infrastructure in relation to environmental aspects with auditable indicators;
- (k) closure cost estimation procedure, based on market related figures, which ensures that identified rehabilitation, decommissioning, closure and post-closure costs, whether on-going or once-off, are realistically estimated and incorporated into the estimate, on condition that—
  - (i) cost estimates for operations, or components of operations that are more than 30 years from closure will be prepared as conceptual estimates with an accuracy of  $\pm 50$  per cent. Cost estimates will have an accuracy of  $\pm 70$  per cent for operations, or components of operations, 30 or less years (but more than ten years) from closure and  $\pm 80$  per cent for operations, or components of operations ten or less years (but more than five years) from closure. Operations with 5 or less years will have an accuracy of  $\pm 90$  per cent. Motivation must be provided to indicate the accuracy in the reported number and as accuracy improves, what actions resulted in an improvement in accuracy;
  - (ii) the closure cost estimation must include—
    - (aa) an explanation of the closure cost methodology;
    - (bb) auditable calculations of costs per activity or infrastructure;
    - (cc) cost assumptions;
  - (iii) the closure cost estimate must be updated annually during the operation's life to reflect known developments, including changes from the annual review of the closure strategy assumptions and inputs, scope changes, the effect of a further year's inflation, new regulatory requirements and any other material developments; and
- (l) monitoring, auditing and reporting requirements which relate to the risk assessment, legal requirements and knowledge gaps as a minimum and must include—
  - (i) a schedule outlining internal, external and legislated audits of the plan for the year, including—
    - (aa) the person responsible for undertaking the audit(s);

- (bb) the planned date of audit and frequency of audit;
  - (cc) an explanation of the approach that will be taken to address and close out audit results and schedule;
- (ii) a schedule of reporting requirements providing an outline of internal and external reporting, including disclosure of updates of the plan to stakeholders;
- (iii) a monitoring plan which outlines—
  - (aa) parameters to be monitored, frequency of monitoring and period of monitoring;
  - (bb) an explanation of the approach that will be taken to analyse monitoring results and how these results will be used to inform adaptive or corrective management and/or risk reduction activities; and
- (m) motivations for any amendments made to the final rehabilitation, decommissioning and mine closure plan, given the monitoring results in the previous auditing period and the identification of gaps as per 2(l).

## **APPENDIX 7**

### **MINIMUM CONTENT OF AN ENVIRONMENTAL RISK ASSESSMENT REPORT**

#### **1. Objective of the environmental risk assessment report**

The objective of the environmental risk assessment report is to—

- (a) ensure timeous risk reduction through appropriate interventions;
- (b) identify and quantify, based on market related figures, the potential residual environmental risks related to post closure;
- (c) detail the approach to managing the risks;
- (d) quantify, based on market related figures, the potential liabilities associated with the management of the risks; and
- (e) outline monitoring, auditing and reporting requirements.

#### **2. Content of the environmental risk assessment report**

The environmental risk assessment report must contain information that is necessary to determine the potential financial liability associated with the management of residual environmental liabilities post closure, keeping in mind the proposed post-mining end use, once the initial relinquishment criteria has been achieved and must include—

- (a) details of—
  - (i) the person or persons that prepared the plan;
  - (ii) the professional registrations and experience of the preparers;
- (b) details of the assessment process used to identify and quantify the residual risks, including—
  - (i) a description of the risk assessment methodology inclusive of risk identification and quantification;
  - (ii) substantiation why each risk is residual, including why the risk was not or could not be mitigated during concurrent rehabilitation and remediation or during the implementation of the final rehabilitation, decommission and closure plan;
  - (iii) a detailed description of the drivers that could result in the manifestation of the risks, to be presented within the context of closure actions already having been implemented during the execution of concurrent rehabilitation or during the implementation of the final rehabilitation, decommission and closure plan;
  - (iv) a description of the expected timeframe in which the risk is likely to manifest, typically as expected years after closure, and the duration of the impact, including motivation to support these timeframes;
  - (v) a detailed description of the triggers which can be used to identify that the risk is imminent or has manifested, how this will be measured and any cost implications thereof;

- (vi) results and findings of the risk assessment;
  - (vii) an explanation of changes to the risk assessment results as applicable in annual updates to the plan;
- (c) management activities, including—
  - (i) monitoring of results and findings, which informs adaptive or corrective management and/or risk reduction activities;
  - (ii) an assessment of alternatives to mitigate or manage the impacts once the risk has become manifested, which must be focussed on practicality as well as cost of the implementation;
  - (iii) motivation why the selected alternative is the appropriate approach to mitigate the impact;
  - (iv) a detailed description of how the alternative will be implemented;
- (d) costing, calculated using market related figures and the current value of money and no discounting or net present value calculations included in the determination of the quantum of the liability, including—
  - (i) a cost estimation, which must include—
    - (aa) an explanation of the closure cost methodology;
    - (bb) an auditable calculations of costs per activity or infrastructure;
    - (cc) cost assumptions;
    - (dd) monitoring costs post closure to determine whether the risk is imminent or has manifest are to be included in the assessment as are monitoring costs likely to be incurred during the implementation of the strategy to manage or mitigate the impacts once the risk has become manifest;
  - (ii) where appropriate, a differentiation between capital, operating, replacement and maintenance costs;
  - (iii) cost estimates for operations, or components of operations that are more than 30 years from closure prepared as conceptual estimates within an accuracy of  $\pm 50$  per cent. Cost estimates will have an accuracy of  $\pm 70$  per cent for operations, or components of operations, 30 or less years (but more than ten years) from closure and  $\pm 80$  per cent for operations, or components of operations ten or less years (but more than five years) from closure. Operations with 5 or less years will have an accuracy of  $\pm 90$  per cent. Motivation must be provided to indicate the accuracy in the reported number and as accuracy improves, what actions resulted in an improvement in accuracy; and
- (e) monitoring, auditing and reporting requirements, which must include requirements prior to the manifestation of the risk and impacts as well as those once the impacts resulting from the manifestation of the risk are realised, inclusive of the approach that will be taken to analyse

monitoring results and how these results will be used to inform adaptive or corrective management and/or risk reduction activities.

**APPENDIX 8****MINIMUM CONTENT OF AN ANNUAL REHABILITATION (ENVIRONMENTAL MANAGEMENT AND MONITORING) PLAN FOR OFFSHORE OIL AND GAS EXPLORATION OR PRODUCTION****1. Objective of the annual rehabilitation (environmental management and monitoring) plan**

The objective of the annual rehabilitation (environmental management and monitoring) plan is to —

- (a) review concurrent environmental management and monitoring activities already implemented;
- (b) establish environmental management and monitoring goals and outcomes for the forthcoming 3 years or the current operating schedule, whichever time frame is shorter (hereafter referred to as the "operating period"), which contribute to the objectives identified in the holder's final abandonment and decommissioning plan;
- (c) establish a plan, schedule and budget for environmental management and monitoring activities for the forthcoming operating period;
- (d) identify and address shortcomings experienced in the preceding operating period with regard to environmental management and monitoring; and
- (e) evaluate and update the cost of environmental management and monitoring for the operating period and for closure, for purposes of supplementing the financial provision guarantee or other financial provision instrument.

**2. Content of the annual rehabilitation (environmental management and monitoring) plan**

The annual rehabilitation (environmental management and monitoring) plan will be relevant for the current operating period, after which the plan will be updated by the holder of a right or permit to reflect progress relating to monitoring activities in the preceding operating periods and to establish a plan, schedule and budget for the forthcoming operating period. The annual rehabilitation (environmental management and monitoring) plan must contain information that defines concurrent environmental management and monitoring activities for the forthcoming operating period and how these relate to the abandonment and decommissioning of the assets, as detailed in the final rehabilitation (abandonment), decommissioning and closure plan. The annual rehabilitation (environmental management and monitoring) plan must be measurable and auditable and must include —



- (a) details of the —
  - (i) person or persons that prepared the plan;
  - (ii) professional registrations and experience of the person or persons;
  - (iii) timeframes of implementation of the current, and review of the previous activities;
- (b) the pertinent environmental and project context relating directly to the planned activity;
- (c) results of monitoring of risks identified in the final abandonment and decommissioning plan with a view to informing environmental management and monitoring activities;
- (d) an identification of shortcomings experienced in the preceding operating period;
- (e) details of the planned environmental management and monitoring activities or measures for the forthcoming operating period, including those which will address the shortcomings contemplated in (d) above or which were identified from monitoring in the preceding operating period, and including —
  - (i) if no areas are available for environmental management and monitoring concurrent with the operating period, an indication to that effect and motivation why no environmental management and monitoring can be undertaken;
  - (ii) a site plan indicating at least the approximate environmental management and monitoring locations and the assets to be abandoned and decommissioned at the end of the operating period;
- (f) a review of the previous year's environmental management and monitoring activities, indicating a comparison between activities planned in the previous operating period's environmental management and monitoring plan and actual environmental management and monitoring activities implemented; and
- (g) costing, including —
  - (i) monitoring and maintenance costs likely to be incurred during the operational period of the management and monitoring plan;
  - (ii) auditable calculations of costs per activity or infrastructure; and
  - (iii) cost assumptions.

**APPENDIX 9****MINIMUM CONTENT OF A FINAL REHABILITATION (ABANDONMENT), DECOMMISSIONING AND CLOSURE PLAN FOR OFFSHORE OIL AND GAS EXPLORATION OR PRODUCTION****1. Objective of the final rehabilitation (abandonment), decommissioning and closure plan**

The objective of the final rehabilitation (abandonment), decommissioning and closure plan, which must be measurable and auditable, is to identify the proper procedures and plans for plugging and abandonment of wells and decommissioning of production equipment through —

- (a) providing the objectives, strategies and criteria for final abandonment and decommissioning of the project;
- (b) explaining the risk assessment approach and linking abandonment and decommissioning activities to risk reduction strategies;
- (c) detailing the abandonment and decommissioning actions that clearly indicate the measures that will be taken to mitigate and/or manage identified risks and describes the nature of residual risks that will need to be monitored and managed post abandonment and decommissioning;
- (d) committing to a schedule, budget, roles and responsibilities for final abandonment and decommissioning of each relevant activity or item of infrastructure;
- (e) identifying knowledge gaps and how these will be addressed and filled;
- (f) detailing the full abandonment and decommissioning costs for the life of project at increasing levels of accuracy as the project develops and approaches abandonment and decommissioning; and
- (g) outlining monitoring, auditing and reporting requirements.

**2. Content of the final rehabilitation (abandonment), decommissioning and closure plan**

The final rehabilitation (abandonment), decommissioning and closure plan must be measurable and auditable and must contain information that is necessary for the definition of the abandonment and decommissioning objectives and criteria, indicating what infrastructure and activities will ultimately be abandoned and decommissioned and the risk drivers determining actions and indicating how the abandonment and decommissioning actions will be implemented and indicating monitoring, auditing and reporting requirements. The final rehabilitation (abandonment), decommissioning and closure plan must be measurable and auditable and must include —

- (a) details of —
  - (i) the person or persons that prepared the plan;
  - (ii) the professional registrations and experience of the preparers;
- (b) the context of the project, including —
  - (i) material information and issues that have guided the development of the plan;

- (ii) an overview of—
  - (aa) the environmental context, including but not limited to quality of seabed; and
  - (bb) the social context that may influence abandonment and decommissioning activities, if any;
- (iii) stakeholder issues and comments that have informed the plan;
- (iv) the operations plan and schedule for the approved operations, and must include —
  - (aa) appropriate description of the operations plan;
  - (bb) drawings and figures to indicate the anticipated operations;
- (c) findings of an environmental risk assessment leading to the most appropriate closure strategy, including —
  - (i) a description of the risk assessment methodology including risk identification and quantification, to be undertaken for all areas of infrastructure or activity or aspects for which a holder of a right or permit has a responsibility to mitigate an impact or risk at abandonment and decommissioning;
  - (ii) an identification of indicators that are most sensitive to potential risks and the monitoring of such risks with a view to informing abandonment and decommissioning activities;
  - (iii) an identification of conceptual abandonment and decommissioning strategies to avoid, manage and mitigate the impacts and risks;
  - (iv) a reassessment of the risks to determine whether, after the implementation of the abandonment and decommissioning strategy, the residual risk has been avoided and / or how it has resulted in avoidance and / or management of impacts and whether this is acceptable to the offshore oil and gas operation and stakeholders; and
  - (v) an explanation of changes to the risk assessment results, as applicable in updates to the plan;
- (d) design principles, including —
  - (i) the legal and governance framework and interpretation of these requirements for the abandonment and decommissioning principles;
  - (ii) abandonment and decommissioning objectives and strategies, which objectives and strategies must reflect, where applicable, the local environmental and socio-economic context and regulatory and corporate requirements and stakeholder expectations;
  - (iii) a description and evaluation of alternative abandonment and decommissioning options where these exist and are practicable within the socioeconomic and environmental opportunities and constraints in which the operation is located;

- (iv) a motivation for the preferred abandonment and decommissioning action within the context of the risks and impacts that are being mitigated;
  - (v) a definition and motivation of the abandonment and decommissioning period, taking cognisance of the probable need to implement post abandonment and decommissioning monitoring and maintenance for a period sufficient to demonstrate that criteria have been achieved;
  - (vi) a detailed description of the assumptions made to develop abandonment and decommissioning actions in the absence of detailed knowledge on site conditions, potential impacts, material availability, stakeholder requirements and other factors for which information is lacking;
- (e) abandonment and decommissioning actions, including —
  - (i) the development and documenting of a description of specific technical solutions related to abandonment and decommissioning options, which must include all infrastructure and activities associated with operations for which the company has the responsibility to implement abandonment and decommissioning actions;
  - (ii) the development and maintenance of a list and assessment of threats and opportunities and any uncertainties associated with the preferred abandonment and decommissioning option, which list will be used to identify and define any additional work that is needed to reduce the level of uncertainty;
- (f) an indication of the organisational capacity that will be put in place to implement the plan, including —
  - (i) organisational structure as it pertains to the plan;
  - (ii) responsibilities;
  - (iii) training and capacity building that may be required to build abandonment and decommissioning competence;
- (g) an indication of gaps in the plan, including an auditable action plan and schedule to address the gaps;
- (h) relinquishment criteria for each activity or infrastructure in relation to environmental aspects with auditable indicators;
- (i) abandonment and decommissioning cost estimation procedure, which ensures that identified abandonment and decommissioning costs, whether on-going or once-off, are realistically estimated and incorporated into the estimate, on condition that —
  - (i) cost estimates for operations, or components of operations that are more than 30 years from closure will be prepared as conceptual estimates with an accuracy of  $\pm 50$  per cent. Cost estimates will have an accuracy of  $\pm 65$  per cent for operations, or components of operations, 15 or less years (but more than five years) from closure and  $\pm 80$  per cent for operations, or components of operations 5 or less years (but more than 3 years) from closure. Operations with 3 or less years will have an accuracy of  $\pm 90$  per cent. Motivation must be provided to indicate the accuracy in the reported

- number and as accuracy improves, what actions resulted in an improvement in accuracy;
- (ii) the abandonment and decommissioning cost estimation must include —
    - (aa) an explanation of the closure cost methodology;
    - (bb) auditable calculations of costs per activity or infrastructure; and
    - (cc) cost assumptions;
  - (iii) the abandonment and decommissioning cost estimate must be updated every 3 years or for the time frame of planned operations, whichever time frame is shorter (hereafter referred to as, operating period), during the operation's life to reflect known developments, including changes from the review of the abandonment and decommissioning strategy assumptions and inputs, scope changes, the effect of inflation, new regulatory requirements and any other material developments;
- (j) monitoring, auditing and reporting requirements which relate to the risk assessment, legal requirements and knowledge gaps as a minimum and must include —
- (i) a schedule outlining internal, external and legislated audits of the plan for the year, including —
    - (aa) the person responsible for undertaking the audit(s);
    - (bb) the planned date of audit and frequency of audit;
    - (cc) an explanation of the approach that will be taken to address and close out audit results and schedule;
  - (ii) a schedule of reporting requirements providing an outline of internal and external reporting, including disclosure of updates of the plan to stakeholders;
  - (iii) a monitoring plan which outlines—
    - (aa) parameters to be monitored, frequency of monitoring and period of monitoring;
    - (bb) an explanation of the approach that will be taken to analyse monitoring results and how these results will be used to inform adaptive or corrective management and/or risk reduction activities; and
- (k) motivations for any amendments made to the abandonment and decommissioning plan, given the monitoring results in the previous auditing period and the identification of gaps as per 2(i).

**APPENDIX 10****MINIMUM CONTENT OF AN ENVIRONMENTAL RISK ASSESSMENT REPORT FOR OFFSHORE OIL AND GAS EXPLORATION OR PRODUCTION****1. Objective of the environmental risk assessment report**

The objective of the environmental risk assessment report is to —

- (a) ensure timeous risk reduction through appropriate interventions;
- (b) identify and quantify the potential residual environmental risks related to abandonment and decommissioning;
- (c) detail the approach to managing the risks;
- (d) quantify the potential liabilities associated with the management of the risks; and
- (e) outline monitoring, auditing and reporting requirements.

**2. Content of the environmental risk assessment report**

The environmental risk assessment report must contain information that is necessary to determine the potential financial liability associated with the management of residual environmental liabilities post abandonment and decommissioning, and must include —

- (a) details of —
  - (i) the person or persons that prepared the plan;
  - (ii) the professional registrations and experience of the preparers;
- (b) details of the assessment process used to identify and quantify the residual risks, including —
  - (i) a description of the risk assessment methodology inclusive of risk identification and quantification;
  - (ii) substantiation why each risk is residual, including why the risk was not or could not be mitigated during concurrent rehabilitation and remediation or during the implementation of the abandonment and decommissioning plan;
  - (iii) a detailed description of the drivers that could result in the manifestation of the risks, to be presented within the context of abandonment and decommissioning actions already

- having been implemented during the execution of concurrent environmental management and monitoring or during the implementation of the abandonment and decommissioning plan;
- (iv) a description of the expected timeframe in which the risk is likely to manifest, typically as expected years after abandonment and decommissioning, and the duration of the impact, including motivation to support these timeframes;
  - (v) a detailed description of the triggers which can be used to identify that the risk is imminent or has manifested, how this will be measured and any cost implications thereof;
  - (vi) results and findings of the risk assessment;
  - (vii) an explanation of changes to the risk assessment results as applicable in annual updates to the plan;
- (c) management activities, including —
- (i) monitoring of results and findings, which informs adaptive or corrective management and/or risk reduction activities;
  - (ii) an assessment of alternatives to mitigate or manage the impacts once the risk has become manifested, which must be focussed on practicality as well as cost of the implementation;
  - (iii) motivation why the selected alternative is the appropriate approach to mitigate the impact;
  - (iv) a detailed description of how the alternative will be implemented;
- (d) costing, calculated using the current value of money and no discounting or net present value calculations included in the determination of the quantum of the liability, including —
- (i) a cost estimation, which must include —
    - (aa) monitoring costs during abandonment and decommissioning to determine whether a risk is imminent or has manifest. These costs are to be included in the assessment as are monitoring costs likely to be incurred during the implementation of the strategy to manage or mitigate the impacts once the risk has become manifest;
    - (bb) an auditable calculation of costs per activity or infrastructure;
    - (cc) cost assumptions;
  - (ii) where appropriate, a differentiation between capital, operating, replacement and maintenance costs;
  - (iii) cost estimates for operations, or components of operations that are more than 30 years from closure will be prepared as conceptual estimates with an accuracy of  $\pm 50$  per cent. Cost estimates will have an accuracy of  $\pm 65$  per cent for operations, or components of operations, 15 or less years (but more than five years) from closure and  $\pm 80$  per cent for operations, or components of operations 5 or less years (but more than 3 years) from



closure. Operations with 3 or less years will have an accuracy of  $\pm 90$  per cent. Motivation must be provided to indicate the accuracy in the reported number and as accuracy improves, what actions resulted in an improvement in accuracy; and

- (e) monitoring, auditing and reporting requirements, which must include requirements prior to the manifestation of the risk and impacts as well as those once the impacts resulting from the manifestation of the risk are realised, inclusive of the approach that will be taken to analyse monitoring results and how these results will be used to inform adaptive or corrective management and/or risk reduction activities.