

(20 November 2015 – to date)

NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

(Gazette No. 19519, Notice No. 1540. Commencement date: 29 January 1999 [Proc. No. 8, Gazette No. 19703])

FINANCIAL PROVISIONING REGULATIONS, 2015

*Government Notice R1147 in Government Gazette 39425 dated 20 November 2015. Commencement date:
20 November 2015.*

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby 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.

(Signed)

BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

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CHAPTER 1 DEFINITIONS AND PURPOSE OF THE REGULATIONS

1. Definitions

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

“annual rehabilitation plan” means a plan contemplated in regulations 6(a) and 11(1)(a) of these Regulations;

“applicant” means an applicant for a prospecting right, mining permit, mining right, exploration right or production right in terms 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;

“**care and maintenance plan**” means a plan contemplated in regulation 16 of these Regulations;

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

“**environmental risk assessment report**” means an assessment and report contemplated in regulation 6(c) and 11(1)(c) 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) and 11(1)(b) of these Regulations;

“**holder**” has the meaning assigned to it in sections 41 and 89 of the Mineral and Petroleum Resources Development Act, 2002;

“**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 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;

“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, resource economy and financial fields; and

“the Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

2. Purpose of Regulations

The purpose of these Regulations is to regulate the determine 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 latent or residual environmental impacts that may become known in the future.

3. Application of Regulations

- (1) These Regulations apply to an applicant and a holder of a right or permit.
- (2) These Regulations apply to a holder to the extent contemplated in Chapter 4 and Chapter 5 of these Regulations.

CHAPTER 2 FINANCIAL PROVISION

4. Determination of financial provision

An applicant 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.

5. Scope of financial provision

An applicant or holder of right or permit must make financial provision for—

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

6. Method for determining financial provision

An applicant must determine the financial provision through a detailed itemisation of all activities and costs, calculated based on the actual costs of implementation of the measures required for—

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

7. Availability of financial provision

The applicant or holder of a right or permit must ensure that the financial provision is, at any given time, equal to the sum of the actual costs of implementing the plans and report contemplated in regulation 6 and regulation 11(1) for a period of at least 10 years forthwith.

8. Financial vehicles used for financial provision

- (1) An applicant 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 registered by the Financial Services Board as an insurer or underwriter;
 - (b) deposit into an account administered by the Minister responsible for mineral resources; or
 - (c) contribution to a trust fund established in terms of applicable legislation, on condition that—
 - (i) this may not be used for the financial provision required in terms of regulations 6(a) or (b) or regulation 11(1)(a) or (b); and
 - (ii) this may not be used by an applicant for, or holder of, a mining permit in terms of the Mineral and Petroleum Resources Development Act, 2002.
- (2) The financial guarantee contemplated in sub-regulation (1)(a) must be in the format set out in Appendix 1 to these Regulations.
- (3) In the event that the bank or the financial institution intends to withdraw the 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 and the Minister, by registered mail, at least four months in advance, and
 - (b) the holder of a right or permit must notify the Minister responsible for mineral resources and the Minister within seven days of receipt of notification from the bank or financial institution contemplated in paragraph (a).
- (4) Where a notice of withdrawal contemplated in subregulation (3) is communicated to the Minister responsible for mineral resources and the Minister, the Minister responsible for mineral resources must, within 10 days of receipt of the notice contemplated in subregulation (3)(b), request the 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.
- (5) Should the 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 (4), 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 of a right or permit to the satisfaction of the Minister responsible for mineral resources.

- (6) 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.
- (7) The trust fund contemplated in sub-regulation (1)(c) must be established by a deed of trust in the format set out in Appendix 2 to these Regulations.

9. General requirements for financial provision

- (1) The determination, review and assessment contemplated in regulations 4, 5, 6, 7 10[sic] and 11 must be undertaken by a specialist or specialists.
- (2) The financial provision liability associated with annual rehabilitation, final closure or latent or residual environmental impacts may not be deferred against assets at mine closure or mine infrastructure salvage value.
- (3) The proof of making or adjusting the financial provision provided by the applicant or holder of a right or permit must identify the manner in which the financial provision will be apportioned through the use of appropriate financial vehicles as provided for in regulation 8(1), as applicable.
- (4) Where regulation 8(1)(a) applies, the proof of making or adjusting the financial provision contemplated in regulations 10(b), 11(3) or 11(4)(a), as the case may be, must be accompanied by a verification of registration of the financial institution contemplated in those sub-regulations.
- (5) Where an applicant 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 financial provision.
- (6) Where financial provision is made for remediation of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted or extraneous water, as contemplated in regulation 5(c) and 6(c), the financial vehicle used for that purpose must, on issuance of a closure certificate in terms of the Mineral and Petroleum Resources Development Act, 2002, be ceded to the Minister responsible for mineral resources, or, if the financial vehicle contemplated in regulation 8(1)(c) is used, the trustees must authorise payment to the Minister responsible for mineral resources.

10. Determination of financial provision by applicant

An applicant must—

- (a) ensure that a determination is made of the financial provision and the plans 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 or arrangements to provide the financial provision prior to commencing with any prospecting, exploration, mining or production operations.

11. Review, assessment and adjustment of financial provision by the holder of a right or permit

- (1) The holder of a right or permit must ensure that a review is undertaken of the requirements for—
 - (a) annual rehabilitation, as reflected in an annual rehabilitation plan;
 - (b) final rehabilitation, decommissioning and closure of the prospecting, exploration, mining or production operations at the end of the life of operations as reflected in a final rehabilitation, decommissioning and mine closure plan; and
 - (c) remediation of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted or extraneous water, as reflected in an environmental risk assessment report.
- (2) The holder of a right or permit must, on completion of the actions contemplated in subregulation (1), ensure that the adequacy of the financial provision is assessed and any adjustments that need to be made to the financial provision are identified—
 - (a) within one year of the commencement of the operations authorised in the right or permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002; or
 - (b) where the operations authorised in the right or permit issued in terms of Mineral and Petroleum Resources Development Act, 2002 has commenced and where the holder of the right or permit is a person with a financial year, immediately after its financial year end that follows such commencement;and annually thereafter.
- (3) The results of the assessment of the adequacy of the financial provision contemplated in subregulation (2), including proof of payment or arrangements to provide for any adjustments to the financial provision, must be—
 - (a) audited by an independent auditor;

- (b) included in any environmental audit report required in terms of the Environmental Impact Assessment Regulations, 2014; and
 - (c) submitted by the holder of a right or permit for approval to the Minister responsible for mineral resources, in the form of an auditor's report, together with the plans and report contemplated in subregulation 11, within—
 - (i) where subregulation (2)(a) applies, three months of the date contemplated in that subregulation; or
 - (ii) where subregulation (2)(b) applies, three months of its financial year end;and annually thereafter.
- (4) Should the action contemplated in subregulation (2) or regulation 14(2) indicate—
- (a) a shortfall in the financial provision, the holder of a right or permit must increase the financial provision to meet the reviewed, assessed and audited financial provision within 90 days from the date of signature on the auditor's report and must provide proof of increasing the financial provision to the Minister responsible for mineral resources;
 - (b) an excess, the amount in excess must be deferred against subsequent assessments.

12. Preparation and submission of plans and reports

- (1) The annual rehabilitation plan contemplated in regulations 6(a) and 11(1)(a) must contain all information set out in Appendix 3 to these Regulations.
- (2) The final rehabilitation, decommissioning and mine closure plan contemplated in regulations 6(b) and 11(1)(b) must contain all information set out in Appendix 4 to these Regulations.
- (3) The environmental risk assessment report contemplated in regulations 6(c) and 11(1)(c) must contain all information set out in Appendix 5 to these Regulations.
- (4) An applicant and holder of a right or permit must include the sum of the financial provision and an indication of how the sum was determined in the environmental management programme submitted in terms of section 24N of the Act and any environmental audit report required in terms of the Environmental Impact Assessment Regulations, 2014.
- (5) The holder of a right or permit must, when complying with regulation 11(3), submit a declaration, signed by the independent auditor of the holder of a right or permit, reconciling the financial provision

submitted for approval and any update thereof with estimates of exposure and liabilities with regard to environmental rehabilitation disclosed in the financial statement of the holder of a right or permit to the Minister responsible for mineral resources.

- (6) The financial statement contemplated in sub-regulation (5) must include contingent liabilities and restricted cash associated with the financial provision liability.
- (7) If the holder of a right or permit cannot submit the assessment findings and auditor's report within the period stipulated in regulation 11(3)(c), 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.
- (8) The extension of the time period contemplated in sub-regulation (7) may be granted for a maximum period of three months and no further extension will be allowed.

13. Responsibility of holder of a right or permit

- (1) The holder of a right or permit must make an environmental management programme submitted in terms of section 24N of the Act and any approved amendment thereof required in terms of the Environmental Impact Assessment Regulations, 2014—
 - (a) available on a publically accessible website of the holder of a right or permit, if such 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 of a right or permit, through its Chief Executive Officer or person appointed in a similar position, —
 - (a) is responsible for implementing the approved plans contemplated in regulation 11; and
 - (b) must ensure that a final rehabilitation, decommissioning and mine closure plan, including financial provision for final rehabilitation, decommissioning and closure as well as an environmental risk report, including financial provision for latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted or extraneous water, as approved by the Minister responsible for mineral resources, is in place before submitting an application for a closure certificate in terms of Section 43 of the Mineral and Petroleum Resources Development Act, 2002.

- (3) All documentation submitted to the Minister responsible for mineral resources by a holder of a right or permit must be signed off by the Chief Executive Officer or person appointed in a similar position as well as an independent auditor.

14. Powers of Minister responsible for mineral resources

- (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(5) the Minister responsible for mineral resources may—
 - (a) request the applicant 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 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 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 those of the applicant 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) The Minister responsible for mineral resources may retain such portion of the financial provision as may be required and which is based on an environmental risk report for any latent, residual or any other environmental impact when a closure certificate is issued in terms of the Mineral and Petroleum Resources Development Act, 2002, and must return the remainder of the financial provision.
- (5) If a holder of a right or permit fails to undertake rehabilitation and remediation of the adverse environmental impacts 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 of a right or permit and the Minister responsible for mineral resources must notify the holder of a right or permit 30 days prior to taking any such action.

15. Timeframes for acknowledgement and consideration of plans and reports related to financial provision

- (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 such a plan, report or financial provision within 60 days of receipt thereof.
- (2) Where a plan, report or 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 plan, environmental risk assessment report, audit report or financial provision must be resubmitted for approval.
- (3) Upon receipt of a revised plan or report or adjusted findings of a review and assessment of a financial provision, the Minister responsible for mineral resources must reconsider such revised plan, report or adjusted findings in accordance with sub-regulation (1)(b).

**CHAPTER 3
CARE AND MAINTENANCE**

16. Care and Maintenance

- (1) A holder of a right or permit may apply at any time to the Minister responsible for mineral resources, on an application form provided by the Minister responsible for mineral resources, to be placed under care and maintenance.
- (2) An application contemplated in sub-regulation (1) must include—
 - (a) a detailed explanation by the holder of a right or permit of the merits to be placed under care and maintenance; and
 - (b) a care and maintenance plan.
- (3) The care and maintenance plan contemplated in subregulation (2)(b) must contain all information set out in Appendix 6 to these Regulations.
- (4) The Minister must consider applications contemplated in subregulation (1) and may—

- (a) approve such application and place a holder of a right or permit under care and maintenance for a period not exceeding 5 years, after which the approval must be reviewed; or
 - (b) direct a holder of a right or permit in writing to take such measures subject to such terms and conditions as the Minister responsible for mineral resources may determine.
- (5) During the period that a holder of a right or permit is placed under approved care and maintenance, the—
- (a) care and maintenance plan must be audited and updated annually, in relation to the audit findings;
 - (b) the audited and updated care and maintenance plan must be submitted, together with an update on the merits to remain placed under care and maintenance and a forecast of when care and maintenance may no longer be required, for approval to the Minister responsible for mineral resources; and
 - (c) financial provision must be maintained and reviewed, assessed and adjusted in accordance with regulation 11 of these Regulations.
- (6) No holder of a right or permit may operate under care and maintenance without an approval from the Minister responsible for mineral resources in terms of these Regulations.

CHAPTER 4 TRANSITIONAL ARRANGEMENTS

17. Transitional arrangements

- (1) Any actions undertaken in terms of regulations 53 and 54 relating to financial provision in the Mineral and Petroleum Resources Development Regulations, 2004 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 for which approval is pending when these Regulations take effect, must despite the repeal of regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 be dispensed with in terms of regulations 53 and 54 the Mineral and Petroleum Resources Development Regulations, 2004 as if regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 were not repealed.

- (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 not repealed and may be approved as if the Mineral and Petroleum Resources Development Regulations, 2004 were not repealed.
- (4) A financial provision approved in terms of the Mineral and Petroleum Resources Development Regulations, 2004 must be regarded to be the financial provision approved in terms of these Regulations, on condition that a holder that operates in terms of a financial provision approved in terms of the Mineral and Petroleum Resources Development Act, 2002 at the time of the coming into operation of these Regulations, must review and align such approved financial provision with the provisions of these Regulations, after the coming into operation of these Regulations, as set out in sub-regulations (5) to (10), and annually thereafter as set out in regulations 9 and 11, read with the necessary changes.
- (5) A holder must—
- (a) within three months of its financial year end following the coming into effect of these Regulations and annually thereafter; or
 - (b) within 15 months after the coming into effect of these Regulations and annually thereafter;
- ensure that a review, assessment and adjustment of the financial provision is conducted in accordance with regulation 11 of these Regulations, read with the necessary changes, and submit an updated financial provision, including the plans and report contemplated in regulation 11(1), a copy of the independent auditor's reports and proof of payment or arrangements to provide the financial provision for approval by the Minister responsible for mineral resources, which updated financial provision must be included in—
- (i) any audit required in terms of an environmental authorisation issued in terms of the Act; and
 - (ii) any amendment of an environmental management programme to be submitted in terms of the Environmental Impact Assessment Regulations, 2014.
- (6) If a holder fails to comply with sub-regulation (5), such holder will be regarded as being in non-compliance with section 24P of the Act, unless a payment agreement as contemplated in subregulations (7) to (9) has been entered into.
- (7) If, after the assessment of the adequacy of the financial provision contemplated in subregulation (5) of these Regulations, the holder 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 holder, enter into a payment agreement with the

holder for a period not exceeding five 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.

- (8) 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 (7) from the holder.
- (9) The payment agreement contemplated in sub-regulation (7), 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 (5).
- (10) On receipt of the updated financial provision contemplated in sub-regulation (5), the Minister responsible for mineral resources must, within 30 days, consider the updated financial provision and—
 - (a) approve the updated financial provision for implementation by the holder;
 - (b) refer the updated financial provision back to the holder for further revision; or
 - (c) not approve the updated financial provision.
- (11) If the updated financial provision is approved, the holder must make the approved financial provision contemplated in sub-regulation (10)(a) within 30 days after the date of approval by using any of the financial vehicles contemplated in regulation 8.
- (12) If the updated financial provision is referred back as contemplated in sub-regulation (10)(b), the holder must review, assess and adjust the updated financial provision as directed by the Minister responsible for mineral resources and re-submit within 30 days for further consideration and approval by the Minister responsible for mineral resources.
- (13) On receipt of the updated financial provision contemplated in sub-regulation (12), the Minister responsible for mineral resources must approve for implementation, or not approve the updated financial provision.
- (14) If the updated financial provision is referred back as contemplated in sub-regulation (10)(b) and the holder does not submit an updated financial provision, such holder will be regarded as being in non-compliance with section 24P of the Act.
- (15) If the updated financial provision is not approved, as contemplated either in sub-regulation (10)(c) or (13)—

- (a) the holder will be regarded as being in non-compliance with section 24P of the Act;
 - (b) the Minister responsible for mineral resources must provide reasons for not approving such an updated financial provision; and
 - (c) the Minister responsible for mineral resources may appoint an independent assessor, at the cost of the holder, to confirm the review and assessment of the financial provision or to revise the review and assessment and to adjust the financial provision to the satisfaction of the Minister responsible for mineral resources, in consultation with the holder.
- (16) Should the review and assessment contemplated in subregulation (15)(c) indicate—
- (a) a shortfall in the financial provision, the holder must increase the financial provision to meet the reviewed, assessed and audited financial provision within 90 days from the date of signature on the auditor's report and must provide proof of increasing the financial provision to the Minister responsible for mineral resources;
 - (b) an excess, the amount in excess must be deferred against subsequent assessments.
- (17) In the event that a bank or financial institution intends to withdraw a financial guarantee to support a financial provision approved prior to the coming into effect of these Regulations, in terms of the Mineral and Petroleum Resources Development Act, 2002, regulation 8(3), (4), (5) and (6) applies.
- (18) A holder that is acting in accordance with a directive issued in terms of section 52(3)(a) of the Mineral and Petroleum Resources Development Act, 2002 when these Regulations come into effect must give effect to such directive.
- (19) A holder must—
- (a) make any approved amendment of an environmental management programme available and accessible as contemplated in regulation 13(1)(a), (b) and (c); and
 - (b) comply with regulations 13(2) and (3).
- (20) The powers and responsibilities contained in regulation 14(2), (3), (4) and (5) apply similarly to a holder, read with the necessary changes.

CHAPTER 5 GENERAL MATTERS

18. Offences

Prepared by:

- (1) An applicant or holder of a right or permit commits an offence if that person contravenes or fails to comply with regulation 4, 5, 6, 7, 9(1), 10, 11, 12(5), 13 or 16(6) of these Regulations.
- (2) A holder commits an offence if that person contravenes or fails to comply with regulation 17(5), 17(11), 17(12), 17(14), 17(16), 17(17) or 17(19) of these Regulations.

19. Penalties

An applicant or holder of a right or permit convicted of an offence in terms of regulation 18(1) of these Regulations or a holder convicted of an offence in terms of regulation 18(2) 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.

20. Short title and commencement

These regulations are called the Financial Provisioning Regulations, 2015 and come into operation on the date of publication in the Gazette.

**APPENDIX 1
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[sic] 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 of a right or permit") is required to determine and make the prescribed financial provision for prospecting, exploration, mining or production operations 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 the mine known as and situated at (give full description of property) or any applicable part thereof (the "Mine"), and we, as Guarantor, confirm that the amount of R..... (.....) (the "Guaranteed Sum") is available to you for the purpose of executing the plans used to determine the prescribed financial provision.

2. The Guarantor hereby unconditionally undertakes, as a principal obligation, to pay to you the Guaranteed Sum by no later than 2 working days (Mondays to Fridays, excluding weekends and public holidays) after receipt of a written claim from you (or made on your behalf) to do so, which claim:

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

2.1.1 has failed to execute the plans used to determine the financial provision in accordance with its terms; and/or

2.1.2 has failed to commence execution of the final rehabilitation, decommissioning and mine closure plan or the environmental risk assessment report within 10 working days (Mondays to Fridays, excluding weekends and public holidays) of the earlier of (i) the date on which such commencement is required by law or (ii) the date of written notice to the holder requiring such commencement, in circumstances in which prospecting, mining, exploration or production operations, (as the case may be) have ceased; and/or

2.1.3 has commenced execution of the final rehabilitation, decommissioning and mine closure plan or the environmental risk assessment report but has failed to make adequate progress with execution of such final rehabilitation, decommissioning and mine closure plan or environmental risk assessment report at any time prior to its completion in accordance with its terms; and/or

2.1.4 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 of a right or permit; or

2.2 may be made without any statement required under clause 2.1 if the Guarantor gives written notice to you in terms of clause 5 of this guarantee.

2.3 A claim under this guarantee may be instituted by you at any stage commencing from the date of signature of this guarantee.

3. The Guaranteed Sum may be held and utilised by you on the condition that you, after having complied with all the provisions of the final rehabilitation, decommissioning and mine closure plan or environmental risk assessment report, will, within 1 year from the date of the payment of the sum by the Guarantor, give account to the Guarantor (in reasonable detail) of how the Guaranteed Sum was utilised and repay any portion of the Guaranteed Sum which was not so utilised to the Guarantor. All monies repaid to the Guarantor in terms of this Guarantee shall bear interest at the prime overdraft rate of your bank compounded monthly and calculated from the date payment was made by the Guarantor to yourself until the date of refund.

4. This guarantee is not transferable, and –

(a) 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;

- (b) shall lapse 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 mine; and
- (c) shall not be construed as placing any other responsibility on the Guarantor other than the paying of the Guaranteed Sum.

5. The Guarantor reserves the right to withdraw from this guarantee after having given you, the Minister responsible for mineral resources and the Minister responsible for environmental affairs at least 4 months' written notice in advance, by registered mail, of his/her/its intention to do so.

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 wording 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 2

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 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 No. 28 of 2002;

1.1.5 National Environmental Management: Air Quality Act No. 39 of 2004;

1.1.6 National Environmental Management: Biodiversity Act No. 10 of 2004;

1.1.7 National Environmental Management: Waste Act No. 59 of 2008;

1.1.8 National Environmental Management: Protected Areas Act No. 57 of 2003;

1.1.9 any applicable Land Use Planning Ordinance or similar instrument;

1.1.10 Companies Act No. 71 of 2008; and

1.1.11 Income Tax Act No. 58 of 1962,

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 to control the management of any or all the impacts of mining activities;

- 1.2 “the beneficiary” means _____ or any other such person as may be agreed to by the beneficiary and the Trustees with the prior written approval of the Minister responsible for mineral resources or, should any person which is a beneficiary (i) commit an act which is or would, if such person were a natural person, be an act of insolvency (as defined in the Insolvency Act 1936), or (ii) be or become financially distressed (as defined in the Companies Act 71 of 2008) or (iii) be declared by a competent court to be insolvent (whether provisionally or finally), then with effect from the date of such event, the Department;
- 1.3 “the Commissioner” means the Commissioner for the South African Revenue Service as referred to in the Income Tax Act No 58 of 1962 as amended (“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 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;
- 1.7 “the Trust” means the _____ Rehabilitation Trust, a Trust created in terms of the Provisions of clause 3 hereof;
- 1.8 “exploration operation” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
- 1.9 “mining operation” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act No. 28 of 2002;
- 1.10 “production operation” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
- 1.11 “prospecting operation” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

1.12 “Statutory Obligations” mean the obligations described 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

1.13 “the Trustees” means _____, _____, _____ and _____, who have agreed to be the first trustees of the _____ REHABILITATION TRUST.

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 on the site approved by the Minister responsible for mineral resources and once issued, updated in line with the right or permit or any amendment thereto.

2.2 The beneficiary is legally obliged, at the time of and after the discontinuation of the operations on a mine or part of a mine, to carry out rehabilitation and closure operations to prevent and control pollution at its mining operations 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 to be covered are set out in the Regulations from time to time which, for the avoidance of doubt, exclude any costs which are required for implementing the annual rehabilitation plan as approved by the Minister of mineral resources to be incurred on an ongoing basis during the life of the operations or part of the operations.

2.3 For the purpose of making provision for the discharge of the beneficiary’s Statutory Obligations, the Founder wishes to establish the Trust to receive, hold and apply such amounts as may be contributed by the Founder and the beneficiary from time to time to provide for the cost of discharging the Statutory Obligations.

2.4 The Founder wishes to create a 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 with the approval of the Commissioner a Trust called the _____ **REHABILITATION TRUST.**

3.2 The sole object of the Trust is to act as the financial provider in whole or part for expenditure which the beneficiary is required to undertake in order to comply with the Statutory Obligations.

4. DONATION

Prepared by:

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 is a professional fiduciary services company, in which event such company may be the sole corporate Trustee. If the Trustees are natural persons, no more than one of them may, subject to clause 6.4, be in the employ of the beneficiary or any related or interrelated (as defined in the Companies Act No. 71 of 2008) person. The Commissioner in consultation with the Minister responsible for mineral resources may upon application by the Trustees grant approval for more than one natural person who is an employee of the beneficiary any related or interrelated (as defined in the Companies Act No. 71 of 2008) person to be appointed as a 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 Commissioner and the Minister responsible for mineral resources. In such event the Founder shall appoint a new corporate Trustee, or two or more natural persons as Trustees, by no later than the date of resignation of the sole 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.
- 6.4 Should (i) the remaining Trustee/s not appoint a new Trustee to replace one who has resigned or is deemed to have vacated his or her office within 30 days of such resignation or vacation being effective, or (ii) the Founder not appoint a new Trustee or Trustees to replace a corporate Trustee who has resigned within one month of such resignation being effective, then in either such case the Minister responsible for mineral resources shall be entitled to appoint one or more Trustees hereunder.

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 conduct 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 be limited to making investments which are capital guaranteed and are made in:
- 12.5.1.1 financial instruments issued by any—
- 12.5.1.1.1 collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- 12.5.1.1.2 long-term insurer as regulated in terms of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);
- 12.5.1.1.3 bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
- 12.5.1.1.4 mutual bank as regulated in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993); and/or
- 12.5.1.2 financial instruments issued by any sphere of government in the Republic which are fully guaranteed out of the National Revenue Fund;
- 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 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 28 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.

13.7 Such net income shall form part of the funds of the Trust and subject to this deed.

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 clause 17.2.

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 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 into the bank account of the Trust the necessary contribution to comply with the financial provision approved by the Minister of mineral resources towards the costs of implementing the measures so approved. 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 that the Statutory Obligations or any of them are required to be fulfilled, and (i) the beneficiary is insolvent, is or has been provisionally or finally liquidated or sequestered, 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 in order to allow 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 undertaking 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

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, also including providing for the remediation and management of latent or residual environmental impacts which may become known in the future, 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 On or after the date of termination of any relevant mining activities or any liquidation referred to in clause 16.1, should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of the beneficiary's account, the Founder shall forthwith pay to the Trust the shortfall.

16.3 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 latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted mine water, those amounts and other assets should be transferred to a company, society, or other association of persons or a trust which fulfils the requirements of section 37A(3) of the Income Tax Act No 58 of 1962, as amended or replaced from time to time, provided such transfer has been approved by the Commissioner.

18. VARIATION OF THIS DEED

Prepared by:

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, the Minister of mineral resources and the Commissioner.

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. _____

Prepared by:

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 3

MINIMUM CONTENT OF AN ANNUAL REHABILITATION PLAN

1. The annual rehabilitation plan will form a component of the environmental management programme to be submitted in terms of section 24N of the Act and the Environmental Impact Assessment Regulations, 2014 and will be subjected to the same requirements of the environmental management programme with regards opportunities for stakeholder review and comment as well as auditing.

2. 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 holder's 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 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.

3. 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 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, 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 4

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

1. The final rehabilitation, decommissioning and mine closure plan will form a component of the environmental management programme to be submitted in terms of section 24N of the Act and the Environmental Impact Assessment Regulations, 2014 and will be subjected to the same requirements of the environmental management programme with regards opportunities for stakeholder review and comment as well as auditing.

2. 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 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.

3. 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, 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 ± 50 per cent. Cost estimates will have an accuracy of ± 70 per cent for operations, or components of operations, 30 or less years (but more than ten years) from closure and ± 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 ± 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(i).

APPENDIX 5

MINIMUM CONTENT OF AN ENVIRONMENTAL RISK ASSESSMENT REPORT

1. The environmental risk assessment report will form a component of the environmental management programme to be submitted in terms of section 24N of the Act and the Environmental Impact Assessment Regulations, 2014 and will be subjected to the same requirements of the environmental management programme with regards opportunities for stakeholder review and comment as well as auditing.

2. 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 latent environmental risks related to post closure;
- (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.

3. 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 latent 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 latent risks, including—
 - (i) a description of the risk assessment methodology inclusive of risk identification and quantification;

- (ii) substantiation why each risk is latent, 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 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 ± 50 per cent. Cost estimates will have an accuracy of ± 70 per cent for operations, or components of operations, 30 or less years (but more than ten years) from closure and ± 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 ± 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 6 CARE AND MAINTENANCE PLAN

1. The care and maintenance plan will—
 - (a) form a component of the environmental management programme to be submitted in terms of section 24N of the Act and the Environmental Impact Assessment Regulations, 2014 and may replace those parts of the environmental management programme dealing with operational aspects; and
 - (b) be subjected to the same requirements of the environmental management programme with regards opportunities for stakeholder review and comment as well as auditing.

2. Content of a care and maintenance plan

The content of a care and maintenance plan must include—

- (a) details of—
 - (i) the person who prepared the care and maintenance plan; and
 - (ii) the expertise of that person to prepare care and maintenance plan.
 - (iii) the persons who will be responsible for the implementation of the care and maintenance plan; and
 - (iv) timelines within which the measures contemplated in the care and maintenance plan must be implemented;
- (b) details of conditions leading to an application for care and maintenance or leading to a motivation to remain placed under care and maintenance and a forecast of when care and maintenance may no longer be required;
- (b) an environmental audit of the site;
(Publisher's note – Duplication of (b) as published in original Gazette)
- (c) details of the results of the environmental audit and details of identified residual and latent impacts;
- (d) a care and maintenance program detailing management of environmental risks associated with mining activities and its implementation thereof;

- (e) appropriate detail on closure performance monitoring and maintenance framework during progressive rehabilitation and post closure, including the methodology, quality control system and remedial strategy;
- (f) care of idle infrastructure and machinery;
- (g) an emergency response action plan;
- (h) details of the proposed care and maintenance cost for monitoring program;
- (i) a sketch plan drawn on an appropriate scale describing the final and future land use proposal and arrangements for the site;
- (j) documenting of the legal obligations and notifications;
- (k) a record of all notices, registers, meetings and comments of the interested and affected parties consulted;
- (l) training provided to the people implementing the care and maintenance programme; and
- (m) a health and safety management plan.