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DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 2272

11 July 2022

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

PROPOSED REGULATIONS PERTAINING TO FINANCIAL PROVISIONING FOR THE MITIGATION AND REHABILITATION OF ENVIRONMENTAL DAMAGE CAUSED BY RECONNAISSANCE, PROSPECTING, EXPLORATION, MINING OR PRODUCTION OPERATIONS

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby consult on the intention to repeal the Financial Provisioning Regulations, 2015 published under Government Notice No. 1147 in Government Gazette No. 39425 of 20 November 2015 and to make Regulations pertaining to the financial provisioning for reconnaissance, prospecting, exploration, mining or production operations under sections 44(1)(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), as set out in the Schedule hereto.

Members of the public are invited to submit written comments or input, within 45 days from the date of the publication of this Notice in the Government Gazette, to any of the following addresses:

By post to: Department of Forestry, Fisheries and the Environment
The Director-General
Attention: Dr Dee Fischer
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By hand at: Reception, Environment House, 473 Steve Biko Road, Arcadia, Pretoria.

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Any inquiries in connection with the Notice can be directed to Dr Dee Fischer at dfischer@environment.gov.za.

Comments or input received after the closing date may not be considered.



MS B D CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

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CHAPTER 1 DEFINITIONS, PURPOSE AND APPLICATION OF THESE REGULATIONS

Definitions

1. (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 indicates otherwise—

“annual rehabilitation plan” means the plan contemplated in regulation 8(1)(i)(aa) of these Regulations;

“applicant” means a person who applies for—

- (a) a permit, right and permission in terms of the Mineral and Petroleum Resources Development Act, excluding permits, rights or permissions contemplated in regulation 3(2) and 3(3)(a) and (b);
- (b) a consent in terms of section 102 of the Mineral and Petroleum Resources Development Act relating to a mining permit or a prospecting, exploration, mining or production right, excluding any consent for amendment or variation of an environmental management programme or works programme where there is no change to the scope of the operation; and

- (c) an environmental authorisation in terms of the Environmental Impact Assessment Regulations for an activity for which the Minister has issued an exemption in terms of section 106(1) of the Mineral and Petroleum Resources Development Act;

“audit” means a review by independent specialists of the scientific and engineering acceptability of the management, mitigation and rehabilitation measures and the adequacy of related costs associated with complying to the provisions of these Regulations;

“closure certificate” means the certificate contemplated in section 43 of the Mineral and Petroleum Resources Development Act which is issued when the risk threshold is reached;

“closure rehabilitation company” means a company provided for in section 37A of the Income Tax Act, 1962 (Act No. 58 of 1962) and which is set up in terms of the Companies Act, 2008 (Act No. 71 of 2008);

“closure rehabilitation trust” means a trust provided for in section 37A of the Income Tax Act, 1962 (Act No. 58 of 1962) and which is set up in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988);

“decommissioning” means the shutdown of an operation with the removal of redundant buildings and the withdrawal from service of equipment, plant and machinery used in relation to an operation regulated in terms of the Mineral and Petroleum Resources Development Act;

“Environmental Impact Assessment Regulations” means the Regulations published in terms of sections 24(5) and 44 of the Act;

“environmental risk assessment report” means an assessment and report contemplated in regulation 8(1)(i)(cc) of these Regulations;

“final rehabilitation, decommissioning and mine closure plan” means a plan contemplated in regulation 8(1)(i)(bb) of these Regulations;

“financial guarantee” means a financial guarantee, which identifies the Minister as the beneficiary, issued by a financial institution as defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

“financial institution” means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990) or insurer licensed to conduct non-life insurance business in the class ‘guarantees’ as defined in the Insurance Act, 2017 (Act No. 18 of 2017);

“holder” means the holder of-

- (a) an environmental authorisation for an activity for which the Minister has issued an exemption in terms of section 106(1) of the Mineral and Petroleum Resources Development Act; and
- (b) permission, permit and right issued in terms of the Mineral and Petroleum Resources Development Act for which no closure certificate has been issued, excluding permits, rights or permissions contemplated in regulation 3(2) and 3(3)(a) and (b), and an old order right for which a conversion as contemplated in Schedule II to the Mineral and Petroleum Resources Development Act, is pending;

“incident” means an unanticipated and unusual natural event which causes, has caused or may cause environmental damage;

“independent” in relation to a specialist or auditor conducting tasks identified in these Regulations, means that—

- (a) such specialist or auditor has no business, financial, personal or other interest in undertaking such tasks excluding normal and fair remuneration for work performed in connection with such tasks; or
- (b) there are no circumstances that may compromise the objectivity of that specialist or auditor in performing such tasks;

“latent environmental impacts” means impacts which are existing and defined, but not yet developed and will manifest post-closure;

“low risk commodities” means minerals which pose a low latent environmental risk when mined and are

- (a) clay (CY);
- (b) aggregate (RM; Gn; St; Stw; M;)
- (c) slate (MS);
- (d) pebbles (no code);
- (e) limestone (L);
- (f) diamonds (D);
- (g) dimensional stone (M);
- (h) gravel (grav); and
- (i) sand (Q and Codes QY, QH, Qwd);

but excludes—

- (i) base metals (B); and
- (ii) minerals identified in (a) to (i) mined through underground mining methods;

“master rate” means the prescribed rate applied to specific mitigation and rehabilitation activities for an operation identified in regulation 7, to be undertaken progressively, at decommissioning and closure and post-closure to manage post-closure impacts;

“market related” means, in relation to the cost of provision of a good or service, the total cost that would be payable to an independent third party provider of that good or service dealing at arm's length, excluding applicable VAT;

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

“mining” means the extraction of a mineral from the earth or any residue deposit or stockpile and includes underground gasification;

“Minister” means the Minister responsible for mineral resources and in the case of regulation 14, includes the Minister responsible for water affairs;

“mitigate” means to alleviate, reduce or make less severe;

“onshore seismic survey” means a terrestrial geological survey involving vibration produced artificially but excludes a desktop study and an aerial survey;

“parent or affiliate company” refers to any company that controls or is controlled by the applicant or holder including by having the power to materially influence the management of such company;

“parent or affiliate company guarantee” is a National Treasury approved, legally binding commitment, by the parent or affiliate company of the applicant or holder, registered in a country which is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958 (New York Convention) and maintains throughout the life of the guarantee, a long term global scale rating which is at least BBB- from one of Standard and Poor's Ratings Services or Fitch Ratings, or Baa3 from Moodys Investors Service, who guarantees to fulfil environmental liability obligations for and on behalf of the holder or applicant in question;

“post-closure” means the period after final rehabilitation, decommissioning and mine closure has been completed but before the risk threshold has been reached and a closure certificate is issued in terms of the Mineral and Petroleum Resources Development Act;

“progressive rehabilitation” involves the mitigation and rehabilitation of disturbed areas concurrently throughout the life of the prospecting, mining, reconnaissance, exploration or production operation, as opposed to the large scale works at the end of the operation;

“risk profiling” means to provide a non-subjective understanding of risks posed by a prospecting, mining, exploration or production operation by assigning numerical values to variables representing different types of environmental risks and the dangers they pose;

“risk threshold” means a determination of the environmental risk resulting from a prospecting, mining, exploration or production operation, which is regarded as being acceptable after the closure objectives have been implemented and the latent environmental impacts have been calculated and which is to be included in the environmental risk assessment report contemplated in these Regulations;

“specialists” means a team of professionals who are qualified by virtue of their demonstrable knowledge, qualifications, skills or expertise in the mining, environmental science, water management and treatment, resource economy, engineering and quantity surveying and are registered with a relevant professional body;

“sustainable end state” the site specific situation for land, water and air at the time of reaching the risk threshold;

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

“unscheduled closure” means the closing of a reconnaissance, prospecting, exploration, mining or production operation prior to the intended date scheduled for final closure of operations identified in the approved final decommissioning and mine closure plan contemplated in regulation 8(1)(i)(bb); and

“VAT” means value-added tax contemplated in the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

(2) The following words will have the meaning assigned to them in terms of section 1 of the Mineral and Petroleum Resources Development Act:

- (a) "effective date";
- (b) "exploration operation";
- (c) "mineral";
- (d) "mining operation";
- (e) "old order right";
- (f) "production operation";
- (g) "prospecting operation";
- (h) "residue deposit"; and
- (i) "residue stockpile."

(3) When a period of days must be reckoned in terms of these Regulations from or after a particular day, that period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.

Purpose of these Regulations

2. The purpose of these Regulations is to—

- (a) establish the obligation of an applicant and holder to progressively plan, implement and manage activities and procedures to mitigate and rehabilitate environmental damage caused by reconnaissance, exploration, prospecting, mining and production operations;
- (b) regulate the manner in which an applicant or holder must determine, provide, set aside, maintain and manage financial security for undertaking progressive rehabilitation, decommissioning, closure and post-closure activities associated with reconnaissance, exploration, prospecting, mining and production operations;
- (c) identify the circumstances under which the Minister and the Minister responsible for water affairs may use the financial provision set aside to effect the obligation of the holder;
- (d) ensure that the State does not become liable for the costs of mitigation, rehabilitation and management of negative environmental impacts and environmental damage which should be covered by a holder; and
- (e) facilitate environmentally sustainable mining.

Application of these Regulations

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

(2) These Regulations do not apply to an applicant or holder of-

- (a) a retention permit or a technical co-operation permit contemplated in sections 31 and 76 of the Mineral and Petroleum Resources Development Act respectively; and
- (b) a reconnaissance permission or permit or an exploration right contemplated in section 13, 74 or 79 of the Mineral and Petroleum Resources Development Act where the application includes only a desktop study or aerial survey.

(3) These Regulations do not apply-

- (a) to an applicant or holder of a reconnaissance permit contemplated in section 74 of the Mineral and Petroleum Resources Development Act for an offshore operation, where the application includes a seismic survey;
- (b) an applicant or holder of an exploration right contemplated in section 79 of the Mineral and Petroleum Resources Development Act for an offshore operation, where the application includes a seismic survey but no drilling of stratigraphic wells; and
- (c) in the case of an incident in which case separate arrangements must be made to cover the liability associated with such activities or incident;

and where these Regulations do not apply, the provisions of section 28 of the Act applies.

CHAPTER 2

THE ENVIRONMENTAL OBLIGATION OF AN APPLICANT AND HOLDER

Obligation of an applicant and holder to plan for, finance and implement environmental mitigation, rehabilitation and management measures

4. Every applicant and holder has an obligation to plan, finance, implement and manage such procedures, requirements, activities and measures in respect of mitigation, progressive rehabilitation, final rehabilitation, decommissioning, closure and post-closure activities related to reconnaissance, exploration, prospecting, mining and production operations as identified in these Regulations.

CHAPTER 3

FINANCIAL PROVISIONING

General principles

5. (1) Financial provisioning is an iterative process of impact assessment and risk profiling to identify, calculate, predict and provide for the costs of mitigating, rehabilitating and managing the negative environmental impacts and risks associated with reconnaissance, prospecting, exploration, mining and production operations, determined against approved closure objectives designed to achieve an approved sustainable end state, in the short, medium and long term.

(2) The financial provision liability may not be deferred against assets at mine closure or mine infrastructure salvage value.

(3) The holder, Chief Executive Officer, or the board of directors and each director individually of the holder where relevant, or person appointed in a similar position, or, where liquidation or business rescue proceedings have been initiated, the liquidator or business rescue practitioner of the operation is ultimately responsible for implementing the requirements of these Regulations and signing off on all documentation submitted to the Minister.

Purpose of financial provisioning

6. The financial provision must guarantee the availability of sufficient funds for—
- (a) progressive rehabilitation;
 - (b) decommissioning and closure activities; and

- (c) the mitigation and management of latent environmental impacts including the ongoing pumping and treatment of polluted or extraneous water, where relevant;

to ensure that –

- (i) a reconnaissance, exploration, prospecting, mining or production operation can be rehabilitated to the approved sustainable end state at the scheduled or unscheduled closure of operations; and
- (ii) latent impacts post-closure are mitigated, rehabilitated and managed.

Determining of the financial provision using the prescribed template, spreadsheet and master rates

7. (1) An applicant applying for—

- (a) a reconnaissance permission;
- (b) a reconnaissance permit;
- (c) a prospecting right which excludes the removal and disposal of minerals;
- (d) an exploration right which includes only an onshore seismic survey;
- (e) a mining permit for a low risk commodity; and
- (f) an environmental authorisation in terms of the Environmental Impact Assessment Regulations for a mining operation contemplated in section 16 or 27 of the Mineral and Petroleum Resources Development Act for which the Minister has issued an exemption in terms of section 106(1), when that operation relates to a low risk commodity—

must determine the financial provision using the prescribed template, spreadsheet and master rates for implementing the activities associated with progressive rehabilitation, decommissioning and mine closure and the management of latent environmental impacts.

(2) In the case of an application for consent in terms of section 102 of the Mineral and Petroleum Resources Development Act to amend or vary a right or permit contemplated in subregulation (1)(c) to (e) or an application to amend an environmental authorisation contemplated in subregulation(1)(f), the applicant must—

- (a) review and revise the information provided in the template contemplated in subregulation (1) in relation to the amendment or variation applied for, and review and revise the information provided in the spreadsheet contemplated in subregulation (1) to re-assess the calculations of the financial provisioning; and
- (b) where necessary, adjust the financial provision set aside or demonstrate that sufficient financial provisioning has already been set aside, should that be the case.

(3) The completion of the information provided in the template, spreadsheet and the determination of the financial provision contemplated in subregulation (1) and the review and re-assessment contemplated in subregulation (2) must be undertaken by independent specialists.

(4) An applicant contemplated in subregulation (1) must submit, with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations, the completed template and spreadsheet for approval by the Minister.

(5) An applicant applying for consent to amend or vary a right or permit, or to amend an environmental authorisation contemplated in subregulation (2), must submit, with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations, the reviewed template and spreadsheet for approval by the Minister.

(6) Where an adjustment is required to the financial provision contemplated in subregulation (2)(b), the proof of payment of the adjusted financial provision or the replacement guarantee issued in relation to the adjusted financial provision must be submitted with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations.

Determining of the financial provision using the plans and report system

8. (1) An applicant applying for—

- (a) a prospecting right which includes the removal and disposal of a mineral;
- (b) mining permit for commodities other than low risk commodities;
- (c) a mining right;
- (d) an exploration right other than an exploration right related to an onshore seismic survey;
- (e) a production right; or
- (f) an environmental authorisation in terms of the Environmental Impact Assessment Regulations for a mining operation contemplated in section 16, 22 or 27, for which the Minister has issued an exemption in terms of section 106(1) of the Mineral and Petroleum Resources Development Act, when that operation does not relate to a low risk commodity—

must determine the financial provision by—

- (i) itemising all activities and costs, based on actual market related rates for implementing the activities for—
 - (aa) progressive rehabilitation, determined in an annual rehabilitation plan, conforming to the content requirements of Appendix 1 to these Regulations;
 - (bb) final rehabilitation, decommissioning and mine closure, determined in the final rehabilitation, decommissioning and mine closure plan, conforming to the content requirements of Appendix 2 to these Regulations; and
 - (cc) rehabilitation and management of latent environmental impacts, including the ongoing pumping and treatment of polluted or extraneous water, where relevant, determined in an environmental risk assessment report, conforming to the content requirements of Appendix 3 to these Regulations; and
- (ii) calculating the financial provision using the methodology conforming to the requirements identified in Appendix 4 to these Regulations.

(2) In the case of an application for consent in terms of section 102 of the Mineral and Petroleum Resources Development Act to amend or vary a permit or right contemplated in subregulation (1)(a) to (e) or to amend an environmental authorisation contemplated in subregulation (1)(f), in order to determine the continued adequacy of the financial provision, the applicant must—

- (a) review the plans and report contemplated in subregulation (1)(i)(aa), (bb) and (cc) in relation to the amendment or variation applied for, to—

- (i) re-assess the activities and costs for progressive rehabilitation to be undertaken in the next year contemplated in subregulation (1)(i)(aa);
- (ii) re-assess the activities and costs for final rehabilitation, decommissioning and mine closure contemplated in subregulation (1)(i)(bb); and
- (iii) re-assess the activities and costs for rehabilitation and management of latent environmental impacts contemplated in subregulation (1)(i)(cc);
- (b) re-assess the calculation of the financial provision based on the re-assessed activities and costs using the calculation methodology contemplated in Appendix 5 to these Regulations; and
- (c) adjust the financial provision set aside or demonstrate that sufficient financial provisioning has already been set aside should that be the case.

(3) The determination and review of the financial provision contemplated in subregulation (1) and (2) must be undertaken by independent specialists.

(4) An applicant contemplated in subregulation (1) must submit with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations, for approval by the Minister—

- (a) the annual rehabilitation plan contemplated in subregulation (1)(i)(aa);
- (b) the final rehabilitation, decommissioning and mine closure plan contemplated in subregulation (1)(i)(bb);
- (c) the environmental risk assessment report contemplated in subregulation (1)(i)(cc); and
- (d) the calculation of financial provision using the methodology contemplated in Appendix 4 to these Regulations.

(5) An applicant applying for consent to amend or vary a permit or right or to amend an environmental authorisation contemplated in subregulation (2), must submit with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations—

- (a) for approval, the—
 - (i) reviewed plans and report contemplated in subregulation (2)(a); and
 - (ii) re-assessed calculations and the adjusted or confirmed financial provision contemplated in subregulation (2)(b) and (2)(c); and
- (b) for information—
 - (i) proof of availability of the adjusted financial provision should an adjustment be required; or
 - (ii) confirmation of the adequacy of the financial provision already set aside should that be the case.

Availability of the financial provision

9. (1) A holder must provide funds for the costs required to implement the activities for annual rehabilitation through the operational budget of the holder.

(2) An applicant contemplated in regulation 7(1) and regulation 8(1) must provide proof of the arrangements made to secure the financial provision prior to the issuing of the environmental authorisation in the case of—

- (a) a financial guarantee, a letter from the financial institution confirming that it will issue the financial guarantee should the requisite permissions, permits, rights or authorisations be granted;
- (b) a closure rehabilitation company or a closure rehabilitation trust, a signed affidavit from the directors or trustees confirming the deposit of the approved sum; and

- (c) proof of a security provided under section 30 of the National Water Act, 1998 (Act No. 38 of 1998) where such security has been provided.

(3) A holder contemplated in regulation 7(1) and 8(1) must provide, within 60 days of the effective date of the permission, permit or right or granting date of the environmental authorisation, proof of the availability of the financial provision in the case of—

- (a) a closure rehabilitation company or a closure rehabilitation trust, a signed affidavit from the directors or trustees confirming the deposit of the approved sum;
- (b) a financial guarantee and parent or affiliate company guarantee, the original guarantee; and
- (c) a security provided under section 30 of the National Water Act, 1998 (Act No. 38 of 1998) where such security has been provided.

(4) When submitting the original financial guarantee contemplated in subregulation (3)(b), proof of registration of the institution providing such a financial guarantee in terms of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) must be provided.

(5) The approved sum of the financial provision must remain in place until a closure certificate is issued, unless withdrawals contemplated in regulation 15 are approved or replacement guarantees for adjusted financial provision contemplated in regulation 11 are provided, whereafter the balance of the financial provision must remain in place until a closure certificate is issued.

(6) Financial provision for rehabilitation and management of latent impacts must, on the issuing of a closure certificate, be transferred to the closure rehabilitation trust contemplated in regulation 10(1)(a) for the purposes of undertaking the rehabilitation and management of latent impacts.

(7) Financial provisioning must be clearly linked and apportioned to the permission, right, permit or an environmental authorisation in the case of an exemption issued by the Minister in terms of section 106(1) of the Mineral and Petroleum Resources Development Act, to which it relates, including funds transferred to the Minister contemplated in subregulation (6).

(8) If a combination of financial vehicles is used, the vehicles and amounts provided for per vehicle, linked to the relevant permission, right, permit or environmental authorisation, must be indicated by the applicant when acting in accordance with subregulation (2).

Financial vehicles available for setting aside financial provision

10. (1) An applicant or holder must set aside financial provision by using one or a combination of a—

- (a) cash deposited into the closure rehabilitation trust administered by the Minister on behalf of applicants or holders established for the sole purpose of regulation 6(b) and (c);
- (b) closure rehabilitation company or a closure rehabilitation trust established for the sole purposes of regulation 6(b) and (c);
- (c) financial guarantee other than a fixed term guarantee, in favour of the Minister; or
- (d) parent or affiliate company guarantee in favour of the Minister as approved by the National Treasury and subject to applicable financial sector legislation.

(2) Where the financial vehicle used is a closure rehabilitation trust contemplated in subregulation (1)(a), no interest will be payable by the Minister for any amounts deposited in such a closure rehabilitation trust.

(3) A closure rehabilitation company or a closure rehabilitation trust contemplated in subregulation (1)(a) and (b) must include the minimum content as set out in Appendix 6 to these Regulations.

(4) The financial guarantee contemplated in subregulation (1)(c) must be prepared in the format as set out in Appendix 7 and when making use of such a guarantee, proof of registration of the institution providing the guarantee must accompany.

(5) The parent or affiliate company guarantee contemplated in subregulation (1)(d) must be prepared in accordance with the requirements of National Treasury.

(6) The trustees or directors empowered to administer the assets of the closure rehabilitation company or closure rehabilitation trust contemplated in subregulation (1)(b) must pay out funds from the closure rehabilitation company or closure rehabilitation trust when ordered to do so by the Minister after the procedures set out in regulation 14 have been complied with.

(7) A parent or affiliate company guarantee contemplated in subregulation (1)(d) may only be used as a financial vehicle by an applicant for or holder of an exploration right or production right in terms of sections 79 and 83 respectively of the Mineral and Petroleum Resources Development Act.

(8) A financial guarantee may not be used as a financial vehicle for the costs associated with mitigation, rehabilitation and management of latent environmental impacts.

Review and update of templates, spreadsheets, plans and reports and confirmation or adjustment of the financial provision

11. (1) In line with the iterative process of impact assessment and risk profiling, a holder must annually review and update the template, spreadsheet, plans, report and calculation contemplated in regulation 7 or 8 with a view to re-assessing—

- (a) the environmental impacts;
- (b) closure objectives; and
- (c) sustainable end state;

to determine—

- (i) the appropriateness of the mitigation and rehabilitation measures;
- (ii) the acceptability of the risks; and
- (iii) the adequacy of the financial provision.

(2) The review and update contemplated in subregulation (1) —

- (a) must be finalised no later than 6 weeks from the holder's financial year end directly following the review year; and
- (b) may be undertaken by internal specialists.

(3) A holder must, on completion of the actions contemplated in subregulation (1) and no later than the 6 week period contemplated in subregulation (2)(a) after the holder's financial year end of the review year, confirm or adjust the financial provision calculation according to the findings of the review and update of the template, spreadsheet, plans and report and the recalculation of the financial provisioning.

(4) Within 90 days of confirming or adjusting the financial provisioning calculations contemplated in subregulation (3), a holder must—

- (a) set aside the adjusted financial provision, if not confirmed, in line with the findings of the review, update and recalculation; and
- (b) submit for approval by the Minister—
 - (i) the revised template and spreadsheet contemplated in regulation 7 or the revised plans and reports contemplated in regulation 8; and
 - (ii) confirmation of the adequacy of the reviewed or the adjusted financial provision; and
- (c) submit to the Minister for information the proof of payment of the adjusted financial provision or the replaced guarantee.

Audits and related requirements

12. (1) A holder must ensure that the template, spreadsheet, plans, report and calculations contemplated in regulation 7 and 8 and the reviewed and updated template, spreadsheet, plans, report and calculation contemplated in regulation 11 are audited every five years, commencing from the effective date of the permission, right or permit, and the date on which the environmental authorisation is granted in the case of an exemption has been issued by the Minister in terms of section 106(1) of the Mineral and Petroleum Resources Development Act.

(2) The audit must be—

- (a) concluded within a period not exceeding 60 months from the effective date of a permission, right or permit or the granting date of the environmental authorisation;
- (b) conducted by independent specialists except in the case of the oil and gas sector, by specialists from a parent or affiliate company;
- (c) included in the form of an auditor's report signed by each of the specialists; and
- (d) submitted for approval within 30 days from the receipt of the auditor's report contemplated in paragraph (c).

(3) A holder must, in addition to and with the report contemplated in subregulation 2(c), where relevant, submit to the Minister, the annual audited financial statements undertaken in compliance with the Companies Act, 2008 (Act No. 71 of 2008), and the Companies Regulations, 2011, once completed.

Cancellation and claiming against a financial guarantee or parent or affiliate company guarantee

13. (1) In the event that the financial institution intends to cancel a financial guarantee or parent or affiliate company guarantee which supports a financial provision, the financial institution or parent or affiliate company must communicate its intentions, by written notice which must be hand delivered to facilitate signing of acceptance of such notice, to the holder, the Minister or his delegated authority/official and the Minister responsible for environmental affairs, at least six months in advance, which 6 months is calculated from the date of acceptance of such notice.

(2) On receipt of the notification of the intention to cancel the financial guarantee or parent or affiliate company guarantee, the holder must—

- (a) within 7 days of receiving the notification, notify the Minister and the Minister responsible for environmental affairs of the intended cancellation; and

- (b) within 60 days from giving notice in terms of paragraph (a), provide the Minister with an alternative arrangement for the financial provisioning for approval.
- (3) Where an alternative arrangement contemplated in subregulation (2)(b) is not received by the Minister within the 67 days contemplated in subregulation (2), the Minister must—
 - (a) call on the financial guarantee or the parent or affiliate company guarantee in terms of subregulation (5) and (6);
 - (b) request the financial institution or parent or affiliate company to deposit the funds into the closure rehabilitation trust contemplated in regulation 10(1)(a); and
 - (c) release the financial guarantee or parent or affiliate company guarantee to the financial institution within 21 days of receipt of confirmation that the funds have been disbursed into the account contemplated in paragraph (b).
- (4) Following a call on the financial guarantee or parent or affiliate company guarantee contemplated in subregulation (3)(a), should the holder provide an alternative arrangement which is to the satisfaction of the Minister—
 - (a) if the funds have already been paid by the financial institution or parent or affiliate company, the funds must be returned to the financial institution or parent or affiliate company within 21 days of approval of the holder's alternative arrangement, unless such funds have already been disbursed by the Minister in carrying out the rehabilitation obligation of the holder; or
 - (b) if the funds have not yet been paid by the financial institution or parent or affiliate company, the Minister must release the fund guarantee within 21 days of a satisfactory alternative arrangement having been made by the holder.
- (5) In the event that the Minister wishes to initiate a claim against the financial guarantee or parent or affiliate company guarantee to give effect to the rehabilitation obligation on behalf of the holder, the Minister must provide the holder, the financial institution, parent or affiliate company, the liquidator or business rescue practitioner with written notice of the intention to initiate a claim, which notice must include—
 - (a) the reasons for such claim; and
 - (b) an instruction that the holder, the parent or affiliate company, liquidator or business rescue practitioner provide to the Minister a plan indicating the measures to be taken to mitigate and rehabilitate the environmental damage, providing actions and timeframes for implementing such actions, within 60 days of receiving the notification.
- (6) Subject to compliance with subregulation (5), the Minister may initiate a claim on a financial guarantee or parent or affiliate company guarantee in order to effect the rehabilitation obligation on behalf of the holder where—
 - (a) the holder has become subject to an order of court placing him/her/it in or under sequestration or liquidation whether voluntary or compulsory, provisional or final; or
 - (b) the holder, liquidator or business rescue practitioner has—
 - (i) ceased carrying out the operations in respect of which the financial guarantee or parent or affiliate company guarantee was issued for the period of at least a year;

- (ii) failed to commence or execute its rehabilitation obligations as described in any document prepared in terms of these Regulations, despite having been given notice that it is required to do so;
 - (iii) failed to provide a satisfactory plan as contemplated in subregulation (5)(b), or has failed to execute such plan; or
- (c) the holder has failed to provide a satisfactory alternative arrangement for financial provisioning as contemplated in subregulation (2)(b).

(7) Should the Minister not receive such plans or be dissatisfied with the measures proposed in accordance with subregulation (4)(b), the Minister must institute the claim and the funds as identified, must be called on.

(8) When the Minister has called on the financial guarantee or parent or affiliate company guarantee, the financial institution or parent or affiliate company must deposit the funds so called upon into the closure rehabilitation trust contemplated in regulation 10(1)(a), within 30 days.

(9) The Minister must, after having given effect to the rehabilitation obligation of the holder contemplated in regulation 5, within 1 year from the date of payment of a guaranteed sum by the guarantor or parent or affiliate company and each year thereafter, give account, in reasonable detail, to the guarantor or parent or affiliate company and National Treasury of how the guaranteed sum, or portion thereof, was utilised and once completed, return any portion of the guaranteed sum which was not so utilised to the guarantor or parent or affiliate company.

Claiming against a closure rehabilitation company or a closure rehabilitation trust to effect mitigation and rehabilitation

14. (1) In the event that the Minister wishes to initiate a claim against the closure rehabilitation company or the closure rehabilitation trust contemplated in regulation 10(1)(a) and (b) to effect the rehabilitation obligation of the holder contemplated in regulation 4, the Minister must provide the holder and the directors or trustees or the liquidator or business rescue practitioner with written notice of the intention to initiate a claim, which notice must include-

- (a) the reasons for such claim; and
- (b) a request that the holder, liquidator or business rescue practitioner provide to the Minister a plan indicating the measures to be taken to mitigate and rehabilitate the environmental damage, providing activities and timeframes for implementing such actions, within 60 days of the written notification.

(2) Should the Minister not receive such plan or be dissatisfied with the measures proposed in accordance with subregulation (1)(b), the Minister must-

- (a) order the directors, trustees, liquidator or business rescue practitioner of the closure rehabilitation company or closure rehabilitation trust to deposit an identified amount into the closure rehabilitation trust administered by the Minister contemplated in regulation 10(1)(a) to enable the Minister to utilise the funds so deposited to give effect to the rehabilitation obligation of the holder contemplated in regulation 4, on behalf of the holder; or
- (b) give effect to the rehabilitation obligation of the holder contemplated in regulation 4 and claim the costs from-

- (i) the closure rehabilitation company or the closure rehabilitation trust through the directors, trustees, liquidator or business rescue practitioner; or
- (ii) the funds from the holder's contribution to the closure rehabilitation trust administered by the Minister for the purposes of the holder's financial provision.

(3) When ordered to do so by the Minister, the directors, trustees, liquidator or business rescue practitioner must deposit the funds into the closure rehabilitation trust contemplated in regulation 10(1)(a) within 21 days of the date of receipt of such order.

(4) The Minister must, after having given effect to the rehabilitation obligation of the holder contemplated in regulation 4 and having considered the funds required for the mitigation, rehabilitation and management of latent environmental damage, within 1 year from the date of payment of the funds, and each year thereafter, give account, in reasonable detail, to the directors, trustees, liquidator or business rescue practitioner and National Treasury, of how the funds, or portion thereof, was utilised and once completed, return any portion which was not utilised to the closure rehabilitation company or closure rehabilitation trust.

Withdrawal against a financial provision to facilitate decommissioning and final closure activities

15. (1) No holder may withdraw funds, or allow funds to be withdrawn, against the financial provision set aside in the financial vehicles contemplated in regulation 10(1)(a), (b) or (c) unless—

- (a) an application by the holder to withdraw funds is made to the Minister;
- (b) the withdrawal is required to facilitate decommissioning and final closure activities, as identified in the approved final rehabilitation, decommissioning and mine closure plan contemplated in regulation 8(1)(i)(bb);
- (c) the withdrawal application is made within the 10 year period immediately preceding the intended date scheduled for final closure of the operations identified in the approved final rehabilitation, decommissioning and mine closure plan contemplated in regulation 8(1)(i)(bb);
- (d) withdrawals are limited to one application per financial year;
- (e) the withdrawal application is based on proof of –
 - (i) mitigation and rehabilitation having been achieved in the form of, amongst others, survey reports, photographs and satellite imagery as identified in the approved final rehabilitation, decommissioning and mine closure plan signed off by an independent specialist; and
 - (ii) financial expenditure on mitigation and rehabilitation in the previous year in relation to the approved final rehabilitation, decommissioning and mine closure plan, in the form of audited reports of expenditure against the mitigation and rehabilitation;
- (f) such withdrawal has been approved by the Minister; and
- (g) the holder notifies National Treasury within 21 days of receiving approval to withdraw the funds.

(2) No funds may be withdrawn from the amount set aside for the management of latent impacts contemplated in regulation 8(1)(i)(cc).

Responsibility of an applicant or holder to consult and disclose information

16. (1) An applicant contemplated in regulation 7(1), 7(5), 8(1) and 8(5) must subject the documentation contemplated in those subregulations to the consultation requirements as prescribed in the Environmental Impact Assessment Regulations.

(2) Within 5 days of receiving notification of the review decision of the documents contemplated in regulation 11(4)(b), the holder, except a holder contemplated in regulation 7(1)(e) and (f), must publish the outcome of such a review decision in a provincial newspaper as well as a newspaper distributed within the municipal area within which the reconnaissance, prospecting, mining, production or exploration operation is located, and indicate where the reviewed and revised template, spreadsheet, plans, report and calculations can be obtained.

(3) The holder, business rescue practitioner or liquidator must inform the Minister and the Minister responsible for the environment within five days of-

- (a) filing a resolution to go into business rescue, with the Companies and Intellectual Property Commission, in terms of section 129(2)(b) of the Companies Act, 2008 (Act No. 71 of 2008) in the case of voluntary business rescue or from date of an application being made to the Court in terms of section 131(1) of the Companies Act, 2008 (Act No. 71 of 2008); or
- (b) filing a resolution for the winding up of the company, with the Companies and Intellectual Property Commission, in terms of section 80(2) of the Companies Act, 2008 (Act No. 71 of 2008), in the case of a voluntary winding up of the company or from date that an application has been made to the Court for the winding up of a company by the Court, in terms of section 81(1) of the Companies Act, 2008 (Act No. 71 of 2008).

(4) An applicant or holder must make the documents contemplated in regulation 7(1) and (2), regulation 8(1)(i) and (2)(a), regulation 11(4)(b) and (c) and regulation 12(2)(c), once submitted to the Minister—

- (a) available on a publicly accessible website of the holder if such a website exists;
- (b) available at the site office of the reconnaissance, exploration, prospecting, mining or production operation; and
- (c) accessible to the public on request.

(5) The documents contemplated in subregulation (4) as well as any reviews thereof must remain on the website and be made available at the site office.

Powers and duties of the Minister

17. (1) If the Minister is not satisfied with the preparation of a template, spreadsheet, plan, report, calculation or a review or adjustment of the financial provision or an audit required in terms of these Regulations, the Minister may—

- (a) request the applicant or holder, at their own costs to—
 - (i) review and revise such a template, spreadsheet, plan, report, calculation, review, adjustment or audit to the satisfaction of the Minister; or
 - (ii) have a template, spreadsheet, plan, report, calculation, review, adjustment or audit reviewed and revised externally by other/alternative independent specialists to the satisfaction of the Minister; or
- (b) appoint an independent specialist or specialists at the cost of the applicant or holder to confirm, review or revise any template, spreadsheet, plan, report, calculation, review, adjustment or audit to the satisfaction of the Minister, in consultation with the applicant or holder.

(2) The Minister must keep a register of funds kept in the closure rehabilitation trust contemplated in regulation 10(1)(a), including details of the amount held per applicant and holder related to permissions, permits, rights and environmental authorisations.

(3) The Minister must—

- (a) acknowledge receipt of all templates, spreadsheets, plans, reports and findings of reviews and assessments submitted in terms of these Regulations within 10 days of receipt thereof; and
- (b) where a decision is required in terms of these Regulations, make such decision within 60 days of receipt of the documentation.

(4) Where a template, spreadsheet, plan, report, calculation, assessment or withdrawal application is rejected, the Minister must provide reasons for the rejection and indicate a timeframe not exceeding 45 days within which a revised template, spreadsheet, plan, calculation, assessment or withdrawal application must be resubmitted for approval.

CHAPTER 4

TRANSITIONAL ARRANGEMENTS

Transitional arrangements

18. (1) Where a—

- (a) mining permit contemplated in regulation 7(1)(c) or regulation 8(1)(a) was applied for prior to or after 20 November 2015 but before the coming into effect of these Regulations; or
- (b) prospecting right or exploration right contemplated in regulation 7(1)(d) or (e) or regulation 8(1)(b) or (d) was applied for prior to 20 November 2015;

regardless when such permit or right was obtained, and such permit or right is still valid when these Regulations come into effect, the requirements related to financial provisioning contained in such permit or right remain in place and must be complied with until that permit or right expires.

(2) Where a prospecting right or exploration right contemplated in regulation 7(1)(d) or (e) was applied for after 20 November 2015 but before the coming into effect of these Regulations and obtained and such right is still valid when these Regulations come into effect, the holder of such right must—

- (a) review and revise the financial provision determined in terms of the Financial Provisioning Regulations, 2015, in order to re-assess the calculations of such determined financial provisioning, by using the prescribed template, spreadsheet and master rates for implementing the activities associated with progressive rehabilitation, decommissioning and mine closure and the management of latent environmental impacts contemplated in regulation 7; and
- (b) where necessary, adjust the financial provision set aside or demonstrate that sufficient financial provisioning has already been set aside, should that be the case.

(3) The review and re-assessment contemplated in subregulation (2) must be undertaken by independent specialists.

(4) The results of the review and re-assessment contemplated in subregulation (3), 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 such holder for approval to the Minister in the form of an auditor's report, together with the completed template and spreadsheet—

- (i) within one year of the commencement of the operations authorised in the right, where commencement has not yet occurred; or
- (ii) where the operations authorised in such a right have commenced and where such holder—

- (aa) is a person with a financial year, within 3 months of its financial year end following the date of coming into effect of these Regulations (amendments); or
- (bb) is not a person with a financial year, within 3 months of the effective date of the right;

whereafter the provisions of regulations 11 and 12 will apply for as long as the right remains valid.

(5) Where a prospecting right or exploration right contemplated in regulation 8(1)(b) or (d) was applied for after 20 November 2015 but before the coming into effect of these Regulations, and obtained, and such right is still valid when these Regulations come into effect, the holder of such right must determine the financial provision as required by regulation 8(1), which determination has been undertaken by independent specialists, using the calculation methodology contemplated in Appendix 5 to these Regulations, provide proof of payment or arrangement, whichever applies, and submit the documents contemplated in regulation 8(4) to the Minister for approval—

- (a) within one year of the commencement of the operations authorised in the right, where commencement has not yet occurred; or
- (b) where the operations authorised in such a right have commenced and where such holder—
 - (i) is a person with a financial year, within 3 months of its financial year end following the date of coming into effect of these amendments; or
 - (ii) is not a person with a financial year, within 3 months of the effective date of the right;

whereafter the provisions of regulations 11 and 12 will apply until the right expires.

(6) A holder contemplated in subregulation (2) or (5) shall, until the period contemplated in (4) or (5) as the case may be, be regarded as having complied with the provisions of these Regulations if such holder has complied with the provisions and arrangements regarding financial provisioning approved as part of the right issued in terms of the Mineral and Petroleum Resources Development Act.

(7) Unless subregulation (8) applies, a holder who applied for a mining right or production right contemplated in regulation 8(1)(c) or (e) prior to or after 20 November 2015, but prior to the coming into effect of these Regulations, regardless when the right was obtained—

- (a) must, by no later than 3 months following its next financial year end, which financial year end occurs after 19 September 2023, determine the financial provision as required by regulation 8(1), which determination has been undertaken by independent specialists, using the calculation methodology contemplated in Appendix 5 to these Regulations, provide proof of payment or arrangement, whichever applies, and submit the documents contemplated in regulation 8(4) to the Minister for approval; and
- (b) shall, until the 3 month period contemplated in paragraph (a), be regarded as having complied with the provisions of these Regulations if such holder has complied with the provisions and

arrangements regarding financial provisioning, approved as part of the right issued in terms of the Mineral and Petroleum Resources Development Act.

(8) A holder of an offshore oil or gas production right contemplated in regulation 8(1)(e), who applied for such right prior to or after 20 November 2015 but prior to the coming into effect of these Regulations, regardless when the right was obtained—

- (a) must by no later than 3 months following its next financial year end, which financial year end occurs after 19 February 2024, determine the financial provision as required by regulation 8(1), which determination has been undertaken by independent specialists, using the calculation methodology contemplated in Appendix 5 to these Regulations, provide proof of payment or arrangement, whichever applies, and submit the documents contemplated in regulation 8(4) to the Minister for approval; and
- (b) shall, until the 3 month period contemplated in paragraph (a), be regarded as having complied with the provisions of these Regulations if such holder has complied with the provisions and arrangements regarding financial provisioning, approved as part of the right issued in terms of the Mineral and Petroleum Resources Development Act.

(9) A holder contemplated in subregulation (7) or (8) must, following the approval of the documents contemplated in subregulation (7) or (8), annually comply with the review requirements contemplated in regulation 11 and every 5 years with the auditing requirements contemplated in regulation 12.

(10) Subject to subregulations (1) to (9), 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.

(11) If a holder contemplated in subregulation (2), (5), (7), (8) or (16) is not able to increase the financial provision to cover any identified shortfall or must transition to another financial vehicle in order to do so, the Minister may, after considering the financial stability and operating history of such holder, enter into a payment agreement or arrangement with such holder for a period not exceeding 5 years to bring the financial provision in line with the requirements of these Regulations, on condition that—

- (a) a payment plan or agreement and timeframe is agreed upon between the Minister and relevant holder;
- (b) the payment plan or agreement and timeframe contemplated in paragraph (a) is consulted with interested and affected parties;
- (c) the payment plan or agreement and timeframe contemplated in paragraph (a) is supported by the Minister of Finance;
- (d) the payment plan or agreement contemplated in paragraph (a) is reviewed annually and compliance with the requirements and timeframe of the plan is demonstrated; and
- (e) the approved sustainable end state and the funding of the latent liability is not compromised.

(12) The Minister may request any information that may be relevant to the decision on the payment plan or agreement contemplated in subregulation (11) from the holder.

(13) The payment plan or agreement contemplated in subregulation (11), as well as any indication of compliance with such plan or 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 these Regulations.

(14) The holder is required to make the payments or arrangements as agreed to in subregulation (11)(a) within the agreed timeframes.

(15) A holder contemplated in regulation 7(2) or 8(2) that obtained consent in terms of section 102 of the Mineral and Petroleum Resources Development Act to amend or vary the prospecting right, exploration right or mining permit contemplated in regulation 7(1)(c) to (e) or regulation 8(1)(a), (b) or (d) which right or permit is still valid when these Regulations come into effect, must comply with the requirements related to financial provisioning contained in such right or permit, as amended or varied, until that right or permit expires.

(16) A holder contemplated in regulation 8(2) that obtained consent in terms of section 102 of the Mineral and Petroleum Resources Development Act to amend or vary the mining right or production right contemplated in regulation 8(1)(c) or (e), which right is still valid when these Regulations come into effect—

- (a) must, by no later than 3 months following its next financial year end, which financial year end occurs after 19 September 2023, or in the case of an offshore oil or gas production right, after 19 February 2024, determine the financial provision as required by regulation 8(1), which determination has been undertaken by independent specialists, using the calculation methodology contemplated in Appendix 5 to these Regulations, provide proof of payment or arrangement, whichever applies, and submit the documents contemplated in regulation 8(4) to the Minister for approval; and
- (b) shall, until the 3 month period contemplated in paragraph (a), be regarded as having complied with the provisions of these Regulations if such holder has complied with the provisions and arrangements regarding financial provisioning, approved as part of the right, as amended or varied, issued in terms of the Mineral and Petroleum Resources Development Act.

(17) A holder contemplated in subregulation (16) must, following the approval of the documents contemplated in subregulation (16), annually comply with the review requirements contemplated in regulation 11 and every 5 years with the auditing requirements contemplated in regulation 12.

CHAPTER 5

GENERAL MATTERS

Offences

19. (1) An applicant commits an offence if that person contravenes or fails to comply with regulation 4, 7, 8, 9(2), 10(1), 16(1), 16(4) or 16(5) of these Regulations.

(2) A holder commits an offence if that person contravenes or fails to comply with regulation 4, 5(2), 5(3), 9(1), 9(3), 9(5), 9(6), 9(7), 9(8), 10(1), 10(3), 10(4), 10(5), 10(7), 10(8), 11(1), 11(2), 11(3), 11(4), 12, 13(2), 15(1), 15(2), 16(2), 16(3), 16(4), 16(5), 18(2), 18(3), 18(4), 18(5), 18(7), 18(8), 18(9), 18(13), 18(14), 18(15), 18(16) or 18(17) of these Regulations.

(3) A financial institution, parent or affiliate company, a liquidator or business rescue practitioner contemplated in these Regulations commits an offence if that parent or affiliate company, or person contravenes or fails to comply with regulation 13(1), 14(3) or 16(3).

(4) A trustee or director of a closure rehabilitation company or closure rehabilitation trust commits an offence if the trustee or director contravenes or fails to comply with regulation 10(6) or 14(3).

Penalties

20. A person convicted of an offence in terms of regulation 19 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

21. The Financial Provisioning Regulations, 2015, as amended by Government Notice No. 1314, Government Gazette No. 40371 of 26 October 2016, Government Notice No. R452, Government Gazette No. 41584 of 20 April 2018, Government Notice No. 991, Government Gazette No. 41921 of 21 September 2018, Government Notice No. 24, Government Gazette No. 42956 of 17 January 2020, and Government Notice No. 495, Government Gazette No. 44698 of 11 June 2021 is hereby repealed.

Short title and commencement

22. These Regulations are called the Financial Provisioning Regulations, 2022 and comes into operation on the date of publication in the *Gazette*.

APPENDIX 1

MINIMUM CONTENT OF AN ANNUAL REHABILITATION PLAN FOR OPERATIONS CONTEMPLATED IN REGULATION 8

1. General

The annual rehabilitation plan must use as its base the findings of the assessment, modelling and monitoring undertaken in the preparation of the final rehabilitation, decommissioning and mine closure plan as contained in Appendix 2.

The annual rehabilitation plan, which must focus on progressive rehabilitation and mitigation, could form a chapter in the final rehabilitation, decommissioning and mine closure plan contemplated in Appendix 2.

Any reference to mining in this plan includes prospecting, exploration, mining and production operations contemplated in regulation 8(1).

Funds to implement the activities of the annual rehabilitation plan must be made available through the operational budget of the holder.

2. Objective of the annual rehabilitation plan

The objective of the annual rehabilitation plan is to—

- 2.1. review progressive mitigation and rehabilitation activities already implemented;
- 2.2. establish mitigation and rehabilitation goals and outcomes for the forthcoming 12 months, which contribute to the progressive achievement of the closure objective and post-mining sustainable end state as identified in the final rehabilitation, decommissioning and mine closure plan;
- 2.3. establish a plan, schedule and budget for mitigation and rehabilitation activities for the forthcoming 12 months based on the calculated costs;
- 2.4. identify gaps in knowledge and research to be undertaken to address shortcomings experienced in the preceding 12 months of mitigation and rehabilitation;
- 2.5. provide an overview of the monitoring results and effect of the mitigation and rehabilitation activities;
- 2.6. highlight any risks emerging from monitoring; and
- 2.7. identify knowledge gaps which impact on achieving the end state and the interventions, including research interventions to address the gaps.

3. Content of the annual rehabilitation plan

The annual rehabilitation plan will be relevant for a period of 12 months, after which the plan is to be updated to reflect progress relating to mitigation and rehabilitation activities in the preceding 12 months and the updated extraction and rehabilitation schedules as well as the budget for the forthcoming 12 months. The annual rehabilitation plan must contain information that defines progressive mitigation and rehabilitation activities for the forthcoming 12 months and how these relate to the operations' closure vision and sustainable end state, as detailed in the final rehabilitation, decommissioning and mine closure plan. The annual rehabilitation plan must indicate what closure objectives and criteria are being achieved through the implementation of the plan, it must be measurable and auditable and must include—

- 3.1. details of the—
 - 3.1.1. specialist or specialists that prepared the plan;
 - 3.1.2. professional registrations and experience of the specialist or specialists;
 - 3.1.3. applicant or holder, including but not limited to the name, physical address, postal address and contact details;
 - 3.1.4. timeframes of implementation of the current, and review of the previous mitigation and rehabilitation activities;
- 3.2. the pertinent environmental and project context highlighting issues which are different to those indicated and considered in the final rehabilitation, decommissioning and mine closure plan which relate directly to the planned annual mitigation and rehabilitation activity (e.g. drought, machine failure or anomaly);
- 3.3. the results of modelling of impacts for the preceding 12 months with a view to informing mitigation and rehabilitation activities going forward;
- 3.4. an identification of activities not undertaken and targets not met in the rehabilitation experienced in the preceding 12 months;
- 3.5. any risk which materialised or anomalies which impacted on the environment over the preceding 12 months, and how these were incorporated into the risk model for the operations;
- 3.6. details of the planned progressive mitigation and rehabilitation activities or measures for the forthcoming 12 months, including those which will address the shortcomings contemplated in paragraph 3.4 above or which address the risk which materialised or were identified from monitoring in the preceding 12 months, and including—
 - 3.6.1. if no areas are available for progressive rehabilitation concurrent with mining, an indication to that effect and motivation why no progressive rehabilitation can be undertaken;
 - 3.6.2. where areas are available for progressive rehabilitation the following information must be tabulated;
 - 3.6.2.1. the nature or type of activity and associated infrastructure to be undertaken;
 - 3.6.2.2. planned remaining life of the activity and impact under consideration;
 - 3.6.2.3. area already disturbed or planned to be disturbed in the period under review;
 - 3.6.2.4. percentage of the area already disturbed, including the bulking factor and volume of material stockpiled;
 - 3.6.2.5. percentage of the area to be disturbed and the anticipated bulking factor and volume of material for stockpiling;
 - 3.6.2.6. area and volume of material available for progressive mitigation and rehabilitation activities;
 - 3.6.2.7. percentage of the area disturbed and volume of material identified in paragraph 3.6.2.4 above and on which progressive mitigation and rehabilitation activities can be undertaken;
 - 3.6.2.8. notes to indicate why total available or planned to be available area differs from area already disturbed or planned to be disturbed;
 - 3.6.2.9. notes to indicate why progressive rehabilitation will not be undertaken on the full available or planned to be available area;
 - 3.6.2.10. the pertinent closure objectives and performance targets that will be addressed in the forthcoming 12 months of operations, which objectives and targets are aligned to the final rehabilitation, decommissioning and mine closure plan;
 - 3.6.2.11. details of mitigation and rehabilitation activities planned on the area the forthcoming 12 months;

- 3.6.2.12. description of the relevant closure design criteria adopted in the annual mitigation and rehabilitation activities and the expected final sustainable end state of land once all mitigation and rehabilitation activities are complete for the activity or aspect;
- 3.7. a site plan indicating at least the total area disturbed, area available for rehabilitation and the area to be rehabilitated per aspect or activity;
- 3.8. a review of the preceding 12 months of mitigation and rehabilitation activities, indicating a comparison between activities planned in the previous year's annual mitigation and rehabilitation plan and actual mitigation and rehabilitation implemented, which should be tabulated and as a minimum contain—
 - 3.8.1. area planned to be rehabilitated during the period under review;
 - 3.8.2. actual area rehabilitated; and
 - 3.8.3. if the variance between planned and actual exceeds 15%, motivation indicating reasons for the inability to rehabilitate the full area; and
- 3.9. costing, based on market related figures, including—
 - 3.9.1. an explanation of the closure cost methodology;
 - 3.9.2. auditable calculations of costs per activity or infrastructure;
 - 3.9.3. cost assumptions; and
 - 3.9.4. monitoring and maintenance costs likely to be incurred during the period of execution of the progressive rehabilitation.

APPENDIX 2

MINIMUM CONTENT OF A FINAL REHABILITATION, DECOMMISSIONING AND MINE CLOSURE PLAN FOR OPERATIONS CONTEMPLATED IN REGULATION 8

1. General

The process of preparing the final rehabilitation, decommissioning and mine closure plan is an iterative process which must annually check that the planned closure objectives are in line with sustainability principles and will achieve an agreed sustainable end state. The calculation of costs associated with the final rehabilitation, decommissioning and mine closure must be based on the rehabilitation and environmental management of the full extent of the area disturbed and must be expressed as an annual figure based on the rate of extraction and extent of current disturbance.

The costs associated with the final rehabilitation, decommissioning and mine closure pronounces on the sustainability of the mine in the case of a greenfield operation or the continued sustainability of an existing operation. The calculated annual cost associated with final rehabilitation, decommissioning and mine closure is to be used in the calculation of the financial provision to be set aside as per Appendix 4 or 5.

Any reference to mining in this plan includes operations contemplated in regulation 8(1).

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

The objective of the final rehabilitation, decommissioning and mine closure plan, at design, throughout the operations and post-closure, is to—

- 2.1. determine, review and revise as required, a sustainable end state for the mining operation which includes a sustainable and achievable post mining economy, as well as sustainable post-closure management and monitoring measures;
- 2.2. set, review and revise sustainable end state objectives including water quality and general environmental quantity objectives;
- 2.3. ensure early and regular consultation throughout the life of the mine, with government and external stakeholders and communities on closure objectives and the sustainable end state objectives;
- 2.4. predict and model the mining activities throughout the life of the mine;
- 2.5. assess and model the expected environmental impacts related to the mining operations based on the life of mine, the mineral extraction schedule and applying and explaining a risk based approach and hierarchy linked to closure activities;
- 2.6. determine, review and revise the mitigation and rehabilitation activities related to the sustainable end state of the environment and post mining economy at closure and post-closure;
- 2.7. determine an overall cost for implementing the mitigation, rehabilitation and management activities;
- 2.8. determine the annual budget and schedule for the implementation of the mitigation, rehabilitation and management activities;
- 2.9. audit and report on the implementation of the plan; and
- 2.10. identify knowledge gaps and propose actions to actively address the identified gaps through among others, applicable research.

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 use as a base the identified sustainable end state objectives of the area and must include—

- 3.1. details of—
 - 3.1.1. the person or persons that prepared the plan;
 - 3.1.2. the professional registrations and experience of the person or persons who prepared the plan;
 - 3.1.3. the applicant or holder, including but not limited to the name, physical address, postal address and contact details;
- 3.2. the context of the project, including but not limited to—
 - 3.2.1. mineral/s to be or being mined, mining method, area already mined or to be mined in the case of a greenfields site, the backlog in rehabilitation if relevant, annual extraction rate, overall extraction rates, life of mine and any material information and issues that have guided the development of the plan;
 - 3.2.2. an overview of—
 - 3.2.2.1. the environmental context, including but not limited to air quality, quantity and quality of surface and groundwater, land, soils, terrestrial and aquatic biodiversity;
 - 3.2.2.2. the social context that may influence closure activities and post-mining land use or be influenced by closure activities and post-mining land use; and
 - 3.2.2.3. other mining activities within a 20km radius of the mining area;
- 3.3. stakeholder issues and comments that have informed the plan;
- 3.4. the mining plan and schedule for the full approved operations, including—
 - 3.4.1. appropriate description of the mine plan;
 - 3.4.2. drawings and figures to indicate how the mine develops;
 - 3.4.3. what areas are disturbed and will be disturbed; and
 - 3.4.4. how infrastructure and structures (including ponds, residue stockpiles etc.) develop during operations;
- 3.5. details of the preferred sustainable end state of the operations including—
 - 3.5.1. the legal and governance framework and interpretation of these requirements for the closure design principles;
 - 3.5.2. a description of the sustainable end state and post mining economy to be achieved, objectives and targets, which objectives and targets must reflect the local environmental and socio-economic context, the regulatory and corporate requirements and stakeholder expectations;
 - 3.5.3. a description and evaluation of alternative closure and post-closure options where these exist, that are practical within the socio-economic context; and
 - 3.5.4. environmental opportunities and constraints in which the operation is located;
- 3.6. findings of an environmental risk assessment and modelling process leading to the most appropriate closure strategy, including—
 - 3.6.1. a description of the risk assessment methodology including risk identification and quantification, to be undertaken for all areas of infrastructure or activities or aspects for which an applicant and holder has a responsibility to mitigate an impact or risk at closure;
 - 3.6.2. an identification of receptors most sensitive to potential risks and the monitoring of such risks with a view to informing mitigation and rehabilitation activities;
 - 3.6.3. an identification and modelling of conceptual closure strategies to avoid, manage and mitigate the impacts and risks;

- 3.6.4. a reassessment of the risks to determine whether, after the implementation of the closure strategy, the latent 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
- 3.6.5. an explanation of changes to the risk assessment results, as applicable in annual updates to the plan; and
- 3.6.6. design principles for achieving the closure objectives, including the proposed final sustainable end state which is appropriate, feasible and possible to implement and which meets the principles of sustainable development, including—
 - 3.6.6.1. descriptions of appropriate and feasible final post-mining land use for the project area;
 - 3.6.6.2. a map of the proposed final sustainable end state of the land;
 - 3.6.6.3. a motivation for the preferred closure option within the context of the risks and impacts that are being mitigated;
 - 3.6.6.4. 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 the risk threshold criteria have been achieved; and
 - 3.6.6.5. details associated with any ongoing research on closure options and post mining economy options;
- 3.6.7. closure actions, including—
 - 3.6.7.1. 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;
 - 3.6.7.2. the development and documenting of a description of specific technical solutions related to infrastructure and facilities for the preferred closure option, which must include all areas, infrastructure, activities and aspects associated with mining for which the mine has the responsibility; and
 - 3.6.7.3. the development and implementation of plans to address threats and opportunities and any uncertainties associated with the proposed closure actions, which will be used to identify and define any additional work or research that is needed to reduce the level of uncertainty;
- 3.6.8. a schedule of actions for the annual rehabilitation plan, and the final rehabilitation, decommissioning and mine closure plan which will ensure mitigation, rehabilitation and management of impacts including ongoing pumping and treatment of extraneous water—
 - 3.6.8.1. linked to the mining work programme, if greenfields, or to the current mine plan, if brownfields, including assumptions and schedule drivers; and
 - 3.6.8.2. including a spatial map, showing planned spatial progression throughout operations;
- 3.6.9. an indication of the organisational capacity that will be put in place to implement the plan, including—
 - 3.6.9.1. organisational structure as it pertains to the plan;
 - 3.6.9.2. responsibilities; and
 - 3.6.9.3. training and capacity building that may be required to build closure competence;
- 3.6.10. an indication of gaps in the plan, including an auditable action plan and schedule to address the gaps;

- 3.6.11. closure and risk threshold criteria for each activity or infrastructure in relation to environmental aspects with auditable indicators;
- 3.6.12. the closure cost based on cost estimates for operations, or components of operations as follows—
- 3.6.12.1. costing, calculated using market related figures and the current value of money and no discounting or net present value calculations;
 - 3.6.12.2. costs must be calculated for the rehabilitation, maintenance and long term monitoring being undertaken on all disturbed areas and associated environmental impacts;
 - 3.6.12.3. costs calculations must be based on rehabilitation, maintenance and long term monitoring of activities undertaken by a third party;
 - 3.6.12.4. where appropriate, a differentiation between capital, operating, replacement and maintenance costs;
 - 3.6.12.5. the closure cost estimation must include cost assumptions and auditable calculations of costs per activity or infrastructure; and
 - 3.6.12.6. cost estimates for operations, or components of operations as follows:

End of life of operation (or components of operation) from year of assessment	Design effort	Degree of accuracy in cost estimation
> 30 years	Pre-Conceptual / Class 5 Estimate / up to 2% of complete definition	-50% to + 50%
10 to 30 years	Conceptual / Pre-feasibility / Class 4 Estimate / up to 15% of complete definition	-30% to + 30%
5 to 10 years	Preliminary / Feasibility / Class 3 Estimate / up to 40% of complete definition	-20% to + 20%
Less than 5 years	Detailed Designs / Bid / Tender / Class 2 estimate up to 75% of complete definition	-10% to + 10% (or less)
* The calculations for operations with 5 or less years must include a line item for carrying out specialist studies up to Detailed Design effort to improve the degree of accuracy to +/-10% as well as a contingency to ensure sufficient funds for closure by a third party. Motivation must be provided to indicate the accuracy in the reported number and as accuracy improves, what actions resulted in an improvement in accuracy.		

- 3.6.13. the estimated costs must be expressed for each year based on the rate of extraction and extent of disturbed area;
- 3.6.14. the risk modelling and the calculation of closure cost estimation 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;
- 3.6.15. monitoring, auditing and reporting requirements contemplated in these Regulations;
- 3.6.16. schedule of reporting requirements contemplated in these Regulations; and

- 3.6.17. 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 above.

APPENDIX 3

MINIMUM CONTENT OF AN ENVIRONMENTAL RISK ASSESSMENT REPORT FOR THE DETERMINATION OF LATENT LIABILITY FOR OPERATIONS CONTEMPLATED IN REGULATION 8

1. General

The environmental risk assessment report must follow an iterative risk profiling approach which through modelling must predict environmental risk, identify their potential to manifest, the timeframes in which they will manifest and the costs associated with their management and rehabilitation once the impacts have manifest. The risk assessment process must calculate a risk threshold for the operations and predict the time period to reach the risk threshold.

The costs calculated for the management and monitoring of latent impacts prior to reaching the risk threshold for scheduled closure pronounce on the sustainability of mining in the case of a greenfields operation and on the continued sustainability in the case of an existing operation.

The assessment must calculate the cost associated with managing and monitoring latent impacts prior to reaching the risk threshold and must include a section on the costs to manage and monitor latent impacts in the event of an unscheduled closure implementing immediately available closure technologies including water treatment options. This cost is to be used in the calculation of the financial provision to be set aside as per Appendix 4 or 5.

The risk assessment report could form a chapter in the final rehabilitation, decommissioning and mine closure plan articulated in Appendix 2.

Any reference to mining in this plan includes operations contemplated in regulation 8(1).

2. Objective of the environmental risk assessment report

The objective of the environmental risk assessment report is to—

- 2.1 ensure the timeous prediction and quantification of environmental risk associated with the operations;
- 2.2 ensure timeous risk reduction through appropriate interventions;
- 2.3 identify the potential latent environmental risks which will manifest post-closure;
- 2.4 detail the approach to managing post-closure risks;
- 2.5 quantify the potential risks and liabilities associated with the management of the risks;
- 2.6 the quantification must be based on market related costs;
- 2.7 calculate a risk threshold and timeframe in which to reach the risk threshold; and
- 2.8 outline and cost the post-closure monitoring, auditing and reporting requirements.

3. Part 1

Content of the environmental risk assessment report for scheduled closure

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 sustainable end state of land, once the initial risk threshold criteria has been achieved and must include—

- 3.1. details of—
 - 3.1.1. the person or persons that prepared the plan;
 - 3.1.2. the professional registrations and experience of the person or persons who prepared the plan;
 - 3.1.3. the applicant or holder including but not limited to: name; physical address; postal address, contact details; and
 - 3.1.4. rights, permits, licences and authorisations associated with the operation including the right or permit number, environmental authorisation number, and similar details of all other authorisation received e.g. water use licence, waste management licence, etc.
- 3.2. details of the assessment process used to identify and quantify the post-closure and possible latent risks, including—
 - 3.2.1. a description of the risk assessment methodology inclusive of risk identification and quantification;
 - 3.2.2. substantiation why each risk will occur post-closure, including why the risk was not or could not be mitigated during progressive mitigation and rehabilitation or during the implementation of the final rehabilitation, decommissioning and mine closure plan;
 - 3.2.3. a detailed description of the drivers that could result in the manifestation of the risks after closure;
 - 3.2.4. 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;
 - 3.2.5. 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;
 - 3.2.6. results and findings of the risk assessment or risks which will occur post-closure; and
 - 3.2.7. an explanation of changes to the risk assessment results as applicable in annual updates to the plan;
- 3.3. management activities, including—
 - 3.3.1. monitoring of results and findings, which informs adaptive or corrective management and/or risk reduction activities;
 - 3.3.2. 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;
 - 3.3.3. motivation why the selected alternative is the appropriate approach to mitigate the impact; and
 - 3.3.4. a detailed description of how the alternative will be implemented; and
- 3.4. calculation of costs for implementing the activities to manage and monitor latent impacts until the agreed risk threshold is reached using market related figures and the current value of money and no discounting or net present value calculations which must—
 - 3.4.1.1. include costs to determine whether the risk is imminent or has manifest are to be included in the assessment as there 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;
 - 3.4.1.2. be based on the management, mitigation, rehabilitation, maintenance and long term monitoring of activities undertaken by a third party;

- 3.4.1.3. be calculated for the management, mitigation, rehabilitation, maintenance and long term monitoring of latent impacts for all disturbed areas and associated environmental impacts;
- 3.4.1.4. include the costs for the management, mitigation, rehabilitation, maintenance and long term monitoring of activities for latent impacts must include cost assumptions and auditable calculations of costs per activity or infrastructure;
- 3.4.1.5. include the risk modelling and the calculation of post-closure cost estimation 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; and
- 3.4.1.6. include the cost estimates for modelling and calculating the post-closure costs must be calculated using accuracy estimations as follows:

End of life of operation (or components of operation) from year of assessment	Design effort	Degree of accuracy in cost estimation
> 30 years	Pre-Conceptual / Class 5 Estimate / up to 2% of complete definition	-50% to + 50%
10 to 30 years	Conceptual / Pre-feasibility / Class 4 Estimate / up to 15% of complete definition	-30% to + 30%
5 to 10 years	Preliminary / Feasibility / Class 3 Estimate / up to 40% of complete definition	-20% to + 20%
Less than 5 years	Detailed Designs / Bid / Tender / Class 2 estimate up to 75% of complete definition	-10% to + 10% (or less)
*The calculations for operations with 5 or less years must include a line item for carrying out specialist studies up to Detailed Design effort to improve the degree of accuracy to +/-10% as well as a contingency to ensure sufficient funds for closure by a third party. Motivation must be provided to indicate the accuracy in the reported number and as accuracy improves, what actions resulted in an improvement in accuracy.		

4. Part 2

Content of the environmental risk assessment report for unscheduled closure

For unscheduled closure, the contents of Part 1 - 3.1 to 3.3.4 (inclusive of 3.3.4) apply as well as the calculation of costs for implementing the activities to manage and monitor latent impacts until the agreed risk threshold is reached using market related figures and the criteria identified for scheduled closure based on—

- 4.1 an assessment of latent impacts for the current disturbed area as well as the disturbance for the next 12 months of operations; and
- 4.2 costs associated with the management, mitigation, rehabilitation and monitoring of latent impacts for the existing extent of the area disturbed until the risk threshold is reached based on costs for technologies immediately available, including water treatment technologies.

APPENDIX 4

METHODOLOGY FOR CALCULATION OF FINANCIAL PROVISION FOR NEW OPERATIONS CONTEMPLATED IN REGULATION 8

1. Application of the methodology

This methodology must be used to determine the funds to be set aside for rehabilitation, decommissioning, closure and post-closure activities associated with new prospecting, exploration, mining or production operations contemplated in regulation 8(1) and is calculated for the operational area.

Any reference to mining in this calculation methodology includes operations contemplated in regulation 8(1).

The costs include the costs associated with rehabilitation and management of impacts from:

- 1.1 the anticipated disturbance of the first year of mining operations; and
- 1.2 the latent impacts associated with the anticipated disturbance for the first year of mining operations.

2. Assumptions made for purposes of calculating

- 2.1 A third party will be employed to undertake mitigation and rehabilitation work;
- 2.2 All costs are based on actual market related figures based on prevailing rates;
- 2.3 Mining infrastructure asset salvage value has not been taken into account; and
- 2.4 Provisional and general costs and contingencies as per the industry standard are included.

3. Calculating the costs to be set aside for final rehabilitation, decommissioning and mine closure

In order to calculate the costs to be set aside for final rehabilitation, decommissioning and mine closure for a new mining operation contemplated in regulation 8(1), the following formula must be used:

Total 1+ Total 2 = sum x VAT.

Where:

Total 1 is – the costs calculated in the final rehabilitation, decommissioning and mine closure plan for the rehabilitation and impact management related to the disturbance that will occur in the first year of the operation; and

Total 2 is – the costs calculated in part 2 of the risk assessment report for the determination of latent liability, which are the costs calculated for the management and rehabilitation of latent impacts that are expected to manifest in the future based on an unscheduled closure on the anticipated disturbed area for the first year of operation.

Where a security in the form of a vehicle as contemplated in regulation 10(1) (b) or (c) has been provided under section 30 of the National Water Act, 1998 (Act No. 38 of 1998) such security may be deducted should there be evidence provided.

APPENDIX 5

METHODOLOGY FOR CALCULATION OF FINANCIAL PROVISION FOR EXISTING OPERATIONS CONTEMPLATED IN REGULATION 8 AND 18

1. Application of the methodology

1.1 This methodology must be used to determine the funds to be set aside for rehabilitation, decommissioning, closure and post-closure activities associated with an existing prospecting, exploration, mining or production operation contemplated in regulation 8 and regulation 18 and is calculated for the operational area.

1.2 Any reference to mining in this calculation includes operations contemplated in regulation 8(1).

1.3 The costs include the costs associated with rehabilitation and management of impacts from:

- 1.3.1 the current disturbed area;
- 1.3.2 the anticipated disturbance of the next year of mining operations; and
- 1.3.3 the latent impacts associated with current disturbed area, the anticipated disturbance of the next year of mining operations.

2. Assumptions made for purposes of calculating

- 2.1 A third party will be employed to undertake mitigation and rehabilitation work;
- 2.2 All costs are based on actual market related figures based on prevailing rates;
- 2.3 Mine infrastructure asset salvage value has not been taken into account; and
- 2.4 Provisional and general costs and contingencies as per the industry standard are included.

3. Calculating the costs to be set aside for final rehabilitation, decommissioning and mine closure

In order to calculate the costs to be set aside for final rehabilitation, decommissioning and mine closure for an existing operation, the following formula must be used:

Total 1+ Total 2 + Total 3 = sum x VAT.

Where:

Total 1 is – the costs calculated in the final rehabilitation, decommissioning and mine closure plan for the rehabilitation and impact management for the current disturbed area;

Total 2 is – the costs calculated in the final rehabilitation, decommissioning and mine closure plan for the rehabilitation and impact management related to the disturbance that will occur in the next 12 months of the operation; and

Total 3 is – the costs calculated in part 2 of the environmental risk assessment report contemplated in Appendix 3 for the determination of latent liability, which are the costs calculated for the management and rehabilitation of latent impacts that are expected to manifest in the future based on an unscheduled closure on the current disturbed area as well as the disturbance for the next year of operation.

Where a security in the form of a vehicle as contemplated in regulation 10(1) (b) or (c) has been provided under section 30 of the National Water Act, 1998 (Act No. 38 of 1998) such security may be deducted should there be evidence provided.

APPENDIX 6

MINIMUM REQUIREMENTS FOR A CLOSURE REHABILITATION COMPANY OR A CLOSURE REHABILITATION TRUST**1. General**

The founding documents of a closure rehabilitation company or a closure rehabilitation trust, hereafter referred to as the “company or trust”, contemplated in these Regulations must comply with the requirements set out in this Appendix and must as a minimum include—

1.1 details of the—

- 1.1.1 holder for which the company or trust is being set up; and
- 1.1.2 trustee(s) or director(s) who will administer the company or trust, including the names and identification information;
- 1.2 the Minister being identified as the first beneficiary and the holder being identified as the second beneficiary of the company or trust;
- 1.3 the permission, right or permit number to which the company or trust relates;
- 1.4 the obligation of the holder, namely to mitigate and rehabilitate environmental damage as identified in these Regulations;
- 1.5 the sole objective of the company or trust, namely to receive contributions and to hold these contributions for the purposes of providing the vehicle contemplated in regulation 10(1) (a) and (b) of these Regulations, for maintaining the financial provision required to be set aside by the holder for the guaranteeing of funds for the purposes of fulfilling the holder's obligation to mitigate and rehabilitate environmental damage;
- 1.6 an indication that—
 - 1.6.1 the provisions of the founding documents of the company or trust may only be varied with written approval of the holder and the Minister and on condition that the objective of the company or trust and obligation of the holder is not varied in any way;
 - 1.6.2 the trustee(s) and director(s) shall not receive any remuneration from the company or trust for their services, unless the trustee or director is a professional fiduciary services company, in which event it may be paid its normal commercial rates for the provision of professional services; and
 - 1.6.3 no person may be a trustee or director if he or she would not be eligible to be a director of a company under the Companies Act, 2008 (Act No. 71 of 2008), or has been convicted of any offence involving dishonesty;
- 1.7 the duties and obligations of the trustee or director, which must include as a minimum—
 - 1.7.1 the duty to not allow any funds to be withdrawn from the company or trust or in any form be alienated from the company or trust, other than if such withdrawal has been approved by the Minister in terms of these Regulations;
 - 1.7.2 the obligation to pay out funds from the trust where the Minister has initiated a claim, contemplated in regulation 14, against a holder's financial provision held in the company or trust;
 - 1.7.3 the obligation to pay out funds from the company or trust when ordered by the Minister to do so after the procedures set out in these Regulations have been complied with; and
 - 1.7.4 that such trustee or director—
 - 1.7.4.1 shall not, in their personal capacity, engage in any trade, undertaking or business of the company or trust, nor shall any such trustee or director participate in any of the affairs of the company or trust, or provide any financial assistance or services or facilities other than is required to fulfil their role as trustee or director;

- 1.7.4.2 shall cause proper books of account to be kept for the company or trust and shall appoint independent auditors to report on the financial statements for each financial year of the company or trust;
 - 1.7.4.3 shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the company or trust to any person and shall utilise the company or trust solely for investment in accordance with the object for which the company or trust has been established;
 - 1.7.4.4 shall not be entitled, on behalf of the company or trust, to—
 - 1.7.4.4.1 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 business of the company or trust; or
 - 1.7.4.4.2 encumber the assets of the company or trust in any manner whatsoever; and
 - 1.8 an indication that the company or trust may only hold financial instruments issued to the holder by any—
 - 1.8.1 collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
 - 1.8.2 long-term insurer as regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
 - 1.8.3 bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);
 - 1.8.4 mutual bank as regulated in terms of the Mutual Bank Act, 1993 (Act No. 124 of 1993); or
 - 1.8.5 sphere of government in the Republic.

APPENDIX 7

TEMPLATE FOR A FINANCIAL GUARANTEE

(FINANCIAL INSTITUTION'S LETTERHEAD)

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

.....

.....

.....

.....

Permission, right or permit number: _____

Sir

DEMAND GUARANTEE FOR THE COMPLIANCE WITH THE STATUTORY OBLIGATION RELATED TO DETERMINING AND MAKING OF FINANCIAL PROVISION FOR OPERATIONS CONTEMPLATED IN REGULATION 7 AND 8

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") is required to determine and provide the prescribed financial provision to undertake mitigation and rehabilitation of environmental damage caused by operations contemplated in regulation 7, 8 and 11, to the satisfaction of the Minister in accordance with the provisions of the Financial Provisioning Regulations, 2022, 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 asand situated at (give full description of property) or any applicable part thereof (the "Mine"), and we, (full name of the authorized signatory) andand(full name of the authorised signatory), in our capacity as(designation) and(designation) 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 for the purpose of executing the mitigation and rehabilitation actions identified in plans used to determine the prescribed financial provision for such operations contemplated in the Financial Provisioning Regulations, 2022, or any legislation or subordinate legislation which supplements, amends and/or replaces such Regulations.

2. Subject to compliance by the Minister with the requirement to give notice as contained in regulation 13(5) of the Financial Provisioning Regulations, 2022, or any legislation or subordinate legislation which supplements, amends and/or replaces such Regulations, and in a manner contemplated in such Regulations, the Guarantor hereby unconditionally undertakes, as a principal obligation, to pay to the Minister the Guaranteed Sum, or any portion thereof, by no later than 30 days after receipt of a written claim from the Minister (or made on behalf of the Minister) to do so.

3. A claim under this guarantee in the circumstances contemplated in the Financial Provisioning Regulations, 2022 or any legislation or subordinate legislation which supports, amends and/or replaces such Regulations, may be instituted by the Minister at any stage commencing from the date of signature of this guarantee and must be delivered to the Guarantor, together with the original guarantee document, or by complying with paragraph 5 if the original guarantee document is lost, at the Guarantor's address as provided herein.

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. Guarantee No. _____ is null and void from the date of issue of this replacement guarantee (scrap if not applicable).

5. This guarantee is not negotiable nor transferable, and—

5.1 must be returned to the Guarantor when making a claim under this guarantee, or if the original guarantee document 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 willful act or omission) as a direct result of such original document not being returned to it;

5.2 shall lapse—

- (a) after the financial institution has paid out the Guaranteed Sum, should the Minister call on the guarantee, or;
- (a) on the granting of a closure certificate in terms of the Mineral and Petroleum Resources Development Act in respect of the whole of the operations; or
- (c) on replacement with an alternative financial vehicle or replacement guarantee, where relevant; or
- (d) on the lapsing of the notice period contemplated in regulation 13(1) of the Financial Provisioning Regulations, 2022, or any legislation or subordinate legislation which supplements, amends and/or replaces such Regulations; and

5.3 shall not be construed as placing any other responsibility on the Guarantor other than the paying of the Guaranteed Sum or any portion thereof.

6. The Guarantor reserves the right to withdraw from this guarantee after having given the holder, the Minister and the Minister responsible for environmental affairs at least 6 months' written notice in advance, which must be hand delivered to facilitate signing of acceptance of such notice to the Minister or his/her delegated authority/official of his/her/its intention to do so.

7. The Guarantor will pay on demand under this guarantee without regard to any claim or dispute of any nature which any party may allege.

8. 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:

.....
.....