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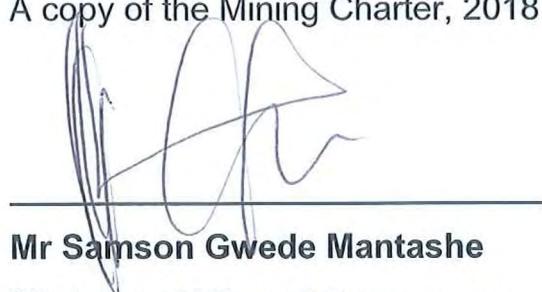
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**NO. 1002****27 SEPTEMBER 2018****BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER  
FOR THE MINING AND MINERALS INDUSTRY, 2018.**

I, Samson Gwede Mantashe, Minister of Mineral Resources, hereby in terms of section 100 (2) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), publish the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 (Mining Charter, 2018) for implementation.

The Mining Charter, 2018 must be read together with the Implementation Guidelines to be gazetted within two months from the date of this publication.

A copy of the Mining Charter, 2018 is attached hereto.



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**Mr Samson Gwede Mantashe**  
**Minister of Mineral Resources**

Date: 26/09/2018

BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE MINING AND  
MINERALS INDUSTRY, 2018.

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## PREAMBLE

The majority of South Africans were systematically marginalised and prevented from ownership of the means of production, and from meaningful participation in the mainstream economy, through colonial rule and exclusionary policies of the apartheid Government. Since its advent, the mining and minerals sector has been the dominant feature of the South African political and socio-economic order. Its continued support and implementation of discriminatory policies and practices brought about inequalities in society broadly, and the mining industry in particular.

To redress these historical inequalities and give effect to Section 9 (equality clause) of the Constitution of the Republic of South Africa, 1996, the democratic Government enacted, amongst others, the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) ("MPRDA").

The primary objective of the MPRDA is to ensure the attainment of Government's objectives, that is, to redress historical socio-economic inequalities, to ensure broad-based economic empowerment and the meaningful participation of Historically Disadvantaged Persons in the mining and minerals industry. Section 100 (2) (a) of the MPRDA empowers the Minister to develop a Broad-Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry ("Mining Charter") as a regulatory instrument. Consequently, in 2004 the Minister developed the Mining Charter with specific measurable targets to effect transformation of the industry.

In 2009, the Department conducted a comprehensive assessment of the progress made to transform the mining industry, against the objectives and agreed targets contained in the Mining Charter, 2004. A number of shortcomings in the implementation of the various

elements of the Mining Charter were identified; namely, Ownership, Procurement, Employment Equity, Beneficiation, Human Resource Development, Mine Community Development, and Housing and Living Conditions. Necessarily, the Mining Charter was amended in 2010 to streamline and expedite the attainment of its objectives. The amended Mining Charter also introduced the Sustainable Development element, which sought to enhance sustainable transformation and growth of the mining industry.

In 2014, a decade after the Mining Charter came into effect, the Department conducted a second assessment. The assessment highlighted the following:

- In some instances, there is a noticeable improvement in the levels of compliance. However, overall transformation of the mining industry remains unacceptably low;
- The spirit of the Mining Charter was not fully embraced, and compliance was generally thought of as means to protect the “social license to operate”; and
- The majority of mining communities continue to live in abject poverty despite the State, being the custodian of the Country’s mineral wealth on behalf of the nation.
- The achievement of meaningful participation by Historically Disadvantaged Persons remains limited, owing to the following:
  - ✓ The trickle flow of benefits; which sought to service debt and to provide cash-flow directly to BEE partners, is wholly inadequate; and
  - ✓ As a result of inefficient administration, trusts holding the interest of mine employees and communities constrained the flow of benefits to their intended beneficiaries.

Against this backdrop, Government initiated another comprehensive review process in 2015. The intention was to strengthen the effectiveness of the Mining Charter as a tool for effecting broad-based and meaningful transformation of the mining and minerals industry.

The review of the Mining Charter recognises that transformation vis-à-vis competitiveness and growth are mutually re-enforcing. Hence the reviewed Mining Charter seeks to remove ambiguities and bring about regulatory certainty by introducing new definitions, terms and targets to harmonise with other legislation. The harmonisation of legislation is intended to ensure meaningful participation of Historically Disadvantaged Persons in accordance with the objects of the MPRDA.

The review further recognises that growth and transformation of the junior mining sector; precious metals sector and the diamond sector, is important for competitiveness of the upstream and downstream minerals sector. In this regard, the Mining Charter, 2018, introduces new provisions applicable to junior miners and amendments to the provisions relating to the precious metals and diamond sectors.

## VISION

To facilitate sustainable transformation, growth and development of the mining industry.

## MISSION

To give effect to Section 100 (2)(a) of the MPRDA, Section 9 of the Constitution and harmonise Government's transformation policies.

## DEFINITIONS

This section defines terms and concepts which are used in the Mining Charter.

**“BEE entrepreneur”** refers to a Historically Disadvantaged Person or enterprise that is at least 51% owned by Historically Disadvantaged Persons (excluding host communities and qualifying employees) with at least 51% of exercisable voting rights and 51% of economic interest;

**“BEE shareholding”** refers to shares held by BEE Entrepreneur(s), Host Communities and qualifying employees;

**“BEE compliant company”** means a company with a minimum B-BBEE level 4 status in terms of the Department of Trade and Industry’s Broad-Based Black Economic Empowerment Codes of Good Practice, and minimum 25% +1 vote ownership by Historically Disadvantaged Persons;

**“Beneficiation”** for purposes of the Mining Charter, beneficiation means the transformation, value addition or downstream processing of a mineral or mineral product (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported;

**“Carried interest”** means shares issued to qualifying employees and host communities at no cost to them and free of any encumbrance. The cost for the carried interest shall be recovered by a right holder from development of the asset;

**“Core and critical skills”** refer to science, technology, engineering and mathematical skills across organisational levels, in both production and operations of a mining company;

**“Demographics”** means the numerical characteristics of a national or provincial population (e.g. population size, age, structure, gender, race, etc.);

**“Economic Interest”** means the legal entitlement of BEE shareholders to dividends, capital gains and other economic rights of a shareholder;

**“Effective ownership”** means the meaningful participation of Historically Disadvantaged Persons in:

- (i) the unencumbered net value ownership;
- (ii) voting rights attaching to an equity instrument owned by or held for a participant measured using the Flow-Through Principle or Control Principle;
- (iii) economic interest representing a return on ownership of the entity similar in nature to a dividend right, measured using the Flow-Through Principle; and
- (iv) management control of mining operations;

**“Equity equivalent benefit”** refers to a percentage equivalent to the issued share capital of the mining right holder, at no cost to a trust or similar vehicle set up for the benefit of host communities;

**“Existing mining right holder”** - for purposes of the ownership element; refers to a holder of a mining right granted prior to the commencement of the Mining Charter, 2018;

**“Historically Disadvantaged Persons”** refers to Historically Disadvantaged persons as defined in the MPRDA;

**“Historically Disadvantaged Persons Owned and Controlled Company”** - for the purposes of the Mining Charter, refers to an entity in which Historically Disadvantaged Persons hold at least 51% of exercisable voting rights and economic interest, including the Flow-Through Principle;

**“Historical BEE Transactions”** refers to BEE Transactions concluded prior to the commencement of the Mining Charter, 2018;

**“Host community”** refers to a community within a local or metropolitan municipality adjacent to the mining area, as defined in the MPRDA;

**“Integrated producer”** refers to a mining right holder that beneficiaries minerals mined by such a mining right holder as part of its business activities;

**“Leviable amount”** is as defined in the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

**“Local content”** means the value added during assembly or manufacturing of the mining good that is produced in South Africa;

**“Meaningful economic participation”** refers to the following key attributes:

- (a) Clearly identifiable partners in the form of Historically Disadvantaged Persons, including women; as well as qualifying employees and host communities;
- (b) A percentage of unencumbered net value based upon the time graduation factor which has accrued to BEE shareholders;
- (c) A percentage of dividends declared, or other monetary distributions or trickle dividends paid to BEE shareholders, subject to the provisions of relevant legislation;
- (d) BEE shareholders with vested interest that has vested can leverage equity in proportion to such vested interest over the life of the transaction to reinvest in other mining projects; and
- (e) BEE shareholders with full shareholder rights entitling them to full participation at annual general meetings, exercising of voting rights in all aspects, including but not limited to, trading and marketing of the commodity herein affected, and anything incidental thereto regardless of the legal form of the instrument used;

**“Mining Charter, 2018”** means the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry; developed in terms of section 100 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

**“Mining Goods”** refers to capital goods and consumables used by a right holder or by a contractor on behalf of a right holder;

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

**“Net value”** refers to the value of equity which accrues to shareholders over time;

**“Non-discretionary expenditure”** means total procurement budget excluding procurement from rail, utilities (electricity, water, rates and taxes) and fuel;

**“Pending applications”** refers to applications lodged and accepted prior to the commencement of the Mining Charter, 2018;

**“Qualifying employees”** for the purposes of the ownership element, refers to employees of a mining company, excluding employees who already hold shares in the same company as a condition of their employment agreement;

**“Services”** refers to services contracted by a right holder, or by a contractor on behalf of a right holder, which includes but is not limited to, mining production services, drilling, mineral trading, mineral marketing, legal, shipping, transportation, information technology services, security, payroll, finance, medical, consulting, cleaning, insurance and any other services which are supplementary to the mine;

**“Social and Labour Plan”** refers to the Social and Labour Plan contemplated in section 23 of the MPRDA;

**“South African Based Company”** refers to a company incorporated and registered in terms of the Companies Act (Act 71 of 2008), with operations in the Country and subject to South African laws.

**“South African manufactured goods”** refers to goods with a minimum of 60% local content during the assembly or manufacturing of the product in South Africa. The calculation of local content excludes profit mark-up, intangible value such as brand value and overheads;

**“Women owned and controlled company”** refers to an entity in which South African women hold at least 51% of exercisable voting rights and economic interest; and

**“Youth”** for the purposes of the Mining Charter, refers to:

- (a) young South African citizens between the ages of 18 to 35 years based on national or provincial demographics; or (b) a juristic person managed and controlled by a person/s contemplated in paragraph (a) where the persons, collectively or as a group, own and control majority of the issued share capital or members' interest; and are able to control the majority of the members' vote.

## 1. OBJECTS OF THE MINING CHARTER

The objects of the Mining Charter, 2018 are:

- (a) The affirmation of the internationally recognised principle of State sovereignty; its right to exercise authority and make laws within its boundaries; over the life of its country - including all its mineral wealth;
- (b) To deracialise ownership patterns in the mining industry through redress of past imbalances and injustices;
- (c) To substantially and meaningfully expand opportunities of Historically Disadvantaged Persons to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;
- (d) To utilise and expand the existing skills base for the empowerment of Historically Disadvantaged Persons;
- (e) To advance employment and diversify the workforce to achieve competitiveness and productivity of the industry;
- (f) To enhance the social and economic welfare of South Africans so as to achieve social cohesion;
- (g) To promote sustainable growth and competitiveness of the mining industry;
- (h) To enable growth and development of the local mining inputs sector by leveraging the procurement spend of the mining industry; and
- (i) To promote beneficiation of South Africa's mineral commodities.

## 2. ELEMENTS OF THE MINING CHARTER

### 2.1 OWNERSHIP

To give effect to meaningful economic participation; integration into the mainstream economy; and effective ownership of the country's mineral resources by the Historically Disadvantaged Persons', a mining right holder must comply with the following:

#### 2.1.1 EXISTING MINING RIGHTS

- 2.1.1.1 An existing mining right holder who has achieved a minimum of 26% BEE shareholding shall be recognised as compliant for the duration of the mining right.
- 2.1.1.2 An existing mining right holder who, at any stage during the existence of a mining right, achieved a minimum of 26% BEE shareholding, and whose BEE partner/s exited prior to the commencement of the Mining Charter, 2018, shall be recognised as compliant for the duration of a mining right and such recognition will not be applicable upon renewal.
- 2.1.1.3 The recognition of continuing consequences shall include historical transactions concluded at holding company level, mining right level, on units of production, shares or assets including all historical BEE transactions which formed the basis upon which new order mining rights were granted.
- 2.1.1.4 The recognition of continuing consequences, in respect of an existing mining right, shall not be transferrable and shall lapse upon transfer of such mining right or part thereof.
- 2.1.1.5 The recognition of continuing consequences shall not apply to an application for a new mining right or renewal of a mining right.
- 2.1.1.6 A renewal of an existing mining right shall be subject to Mining Charter requirements applicable at the time that a mining right renewal application is lodged.

## 2.1.2 PENDING APPLICATIONS

- 2.1.2.1 A pending application, which was lodged and accepted prior to the commencement of the Mining Charter, 2018, shall be processed in terms of the requirements of the Mining Charter, 2010 with a minimum of 26% BEE shareholding.
- 2.1.2.2 A mining right holder contemplated in 2.1.2.1 must, within a period of 5 (five) years from the effective date of such mining right, increase BEE shareholding to a minimum of 30%.

## 2.1.3 NEW MINING RIGHTS

- 2.1.3.1 A new mining right must have a minimum of 30% BEE shareholding, which shall include economic interest plus corresponding percentage of voting rights per mining right or in the mining company which holds a mining right.
- 2.1.3.2 A minimum of 30% BEE shareholding must be distributed in the following manner:
  - (i) A minimum of 5% non-transferable carried interest to qualifying employees from the effective date of a mining right;
  - (ii) A minimum of 5% non-transferrable carried interest or a minimum 5% equity equivalent benefit as defined herein to host communities from the effective date of a mining right;
  - (iii) A mining right holder shall ensure that any reduction in shareholding of existing shareholders through the issue of new shares, shall not reduce qualifying employees carried interest and host communities' carried interest or equity equivalent benefit.
  - (iv) A minimum of 20% effective ownership in the form of shares to a BEE Entrepreneur, 5% of which must preferably be for women.
  - (v) A mining right holder of the minimum 20% shares referred to in subparagraph (iv) shall not be diluted below 51% ownership and control by BEE Entrepreneur.

2.1.3.3 BEE shareholding may be concluded at holding company level, mining right level, on units of production, shares or assets. However, where BEE shareholding is concluded at any level other than at mining right level, the Flow-Through Principle will apply.

#### 2.1.4 EQUITY EQUIVALENT BENEFIT FOR HOST COMMUNITIES

2.1.4.1 The equity equivalent benefit referred to in paragraph 2.1.3.2 (ii) shall be administered as follows:

- 2.1.4.1.1 5% equivalent of the issued share capital of the mining right holder, at no cost to a trust or similar vehicle set up for the benefit of host communities;
  - 2.1.4.1.2 The Trust or similar vehicle shall be established and administered in terms of applicable legislation for the duration of the mining right;
  - 2.1.4.1.3 The Trust or similar vehicle shall comprise of representation from host communities (including Community Based Organisations, Traditional Authorities, etc.) and mining companies;
  - 2.1.4.1.4 A mining right holder must, in consultation with relevant municipalities, host communities, traditional authorities and affected stakeholders; identify host community development needs;
  - 2.1.4.1.5 The Trust or similar vehicle shall be responsible for, amongst others, host community development programme, fund distribution and governance of the equity equivalent benefit;
  - 2.1.4.1.6 All administration costs, project management and consultation fees of the Trust or similar vehicle may not exceed 8% of the total budget;
  - 2.1.4.1.7 An approved host community development programme must be published in, at least, two languages commonly used within the host community.
- 2.1.4.2 A host community development programme approved under this element shall not replace Social and Labour Plan commitments as contemplated in Section 23 of the MPRDA.

### 2.1.5 VESTING OF BEE SHAREHOLDING FOR NEW RIGHTS

- 2.1.5.1 A minimum of 50% BEE shareholding shall vest within two thirds of the duration of a mining right; and
- 2.1.5.2 The prescribed minimum 30% target shall apply for the duration of a mining right.

### 2.1.6 DISPOSAL OF BEE SHAREHOLDING IN RESPECT OF EXISTING AND NEW MINING RIGHTS

- 2.1.6.1 Where a BEE shareholding or part thereof is disposed of below the prescribed minimum shareholding, a mining right holder's empowerment credentials shall be recognised for the duration of the mining right, provided that:
  - 2.1.6.1.1 A mining right holder is compliant with the requirements of the Mining Charter, 2018 at the time of disposal;
  - 2.1.6.1.2 The BEE shareholder must have held the empowerment shares for a minimum period equivalent to a third of the duration of the mining right, and an unencumbered net value must have been realised;
  - 2.1.6.1.3 The recognition of empowerment credentials shall only be applicable to measured effective ownership which has vested to BEE shareholding; and;
  - 2.1.6.1.4 An agreement detailing exit mechanisms and BEE shareholders' remaining financial obligations constituting a contract between the mining right holder and BEE shareholders is submitted to the Department.
- 2.1.6.2 The recognition of consequences of previous deals shall not be claimed against future mining rights or mining right renewal applications.

### 2.1.7 BENEFICIATION EQUITY EQUIVALENT AGAINST THE OWNERSHIP TARGET

- 2.1.7.1 South Africa adopted a strategy on mineral beneficiation to give effect to the National Industrialisation Programme. To this end, this element provides for an equity equivalent mechanism against a BEE Entrepreneur as follows:
  - 2.1.7.1.1 A mining right holder may claim the equity equivalent against a maximum of 5 percentage points of a BEE Entrepreneur shareholding.

- 2.1.7.1.2 An existing mining right holder claimed the eleven (11) percentage points beneficiation offset prior to the commencement of Mining Charter, 2018, shall retain the offset for the duration of the mining right.
- 2.1.7.1.3 Equity Equivalent may only be claimed against a portion of BEE Entrepreneur.
- 2.1.7.1.4 A mining right holder must submit to the Department a Beneficiation Equity Equivalent Plan for approval, as outlined in the Mining Charter implementation guidelines.
- 2.1.7.1.5 A mining right holder will be entitled to apply for equity equivalent credits subject to the following:
- i. Mineral ore or mineral products supplied to independent South African based beneficiation entities at a discount to the mine gate price;
  - ii. Portion of an integrated producer's production that is beneficiated;
  - iii. Mineral ore supplied to BEE Entrepreneur owned beneficiation entities at a discount to the mine gate price;
  - iv. Monetary investment in South African based mineral beneficiation entities;
  - v. Any other existing beneficiation related activities undertaken, or monetary investment made since 2004.
- 2.1.7.2 A mining right holder must submit an annual progress report to the Department, in line with the approved beneficiation equity equivalent plan.

## 2.2 INCLUSIVE PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT

Procurement of South African manufactured goods and services provide opportunities for expanding economic growth, creating decent jobs and widening market access to the country's goods and services.

A mining right holder is required to promote economic growth through the development or nurturing of small, medium and micro enterprises and suppliers of mining goods and services. In instances where a mining right holder procures goods and services of a contractor to undertake extraction or processing (crushing and concentration) of minerals

on their behalf, such goods and services will be deemed to have been procured by the mining right holder.

To achieve inclusive procurement, supplier and enterprise development; a mining right holder must identify all goods and services that will be required in its operations and ensure that its procurement policies adhere to the following criteria:

### **2.2.1 MINING GOODS**

2.2.1.1 A minimum of 70% of total mining goods procurement spend (excluding non-discretionary expenditure) must be on South African manufactured goods. The 70% shall be allocated as follows:

- 2.2.1.1.1 21% to be spent on South African manufactured goods produced by a Historically Disadvantaged Persons owned and controlled company;
- 2.2.1.1.2 5% to be spent on South African manufactured goods produced by a women or youth owned and controlled company; and
- 2.2.1.1.3 44% to be spent on South African manufactured goods produced by a BEE compliant company.

### **2.2.2 SERVICES**

2.2.2.1 A minimum of 80% of the total spend on services (excluding non-discretionary expenditure) must be sourced from South African based company. The 80% shall be allocated as follows:

- 2.2.2.1.1 50% must be spent on services supplied by Historically Disadvantaged Persons owned and controlled company;
- 2.2.2.1.2 15% must be spent on services supplied by women owned and controlled companies;
- 2.2.2.1.3 5% must be spent on services supplied by youth; and
- 2.2.2.1.4 10% must be spent on services supplied by BEE compliant company.

- 2.2.2.2 The above-mentioned procurement targets must be complied with progressively within a period of five (5) years, as outlined in the transitional arrangements.
- 2.2.2.3 A mining right holder must ensure that the terms and conditions offered to women owned and controlled companies, or youth, are not less favourable than those offered to other suppliers.
- 2.2.2.4 All procurement expenditure reported must be the actual expenditure incurred by a mining right holder.

### **2.2.3 VERIFICATION OF LOCAL CONTENT**

- 2.2.3.1 A mining right holder must procure goods in line with a standardised product identification coding system developed by the Department of Trade and Industry.
- 2.2.3.2 A mining right holder shall provide proof of local content for mining goods in the form of certification from the South African Bureau of Standards (SABS) or any other entity designated by the Minister.

### **2.2.4 ENTERPRISE AND SUPPLIER DEVELOPMENT**

- (a) The purpose for implementing supplier and enterprise development is to strengthen local procurement; enhance the ease and cost competitiveness of sourcing mining goods and services and build South Africa's industrial base in critical sectors of production and value addition.
- (b) A mining right holder may invest in enterprise and supplier development against which it may offset its procurement element obligations as follows:

#### **2.2.4.1 MINING GOODS**

- 2.2.4.1.1 Up to 30% of the total procurement budget on mining goods (excluding non-discretionary expenditure) may be offset against supplier development.

2.2.4.1.2 A mining right holder may develop suppliers through Original Equipment Manufacturers (OEMs) as prescribed in the Implementation Guidelines.

#### 2.2.4.2 SERVICES

2.2.4.2.1 Up to 10% of the total procurement budget on services (excluding non-discretionary expenditure) may be offset against supplier and enterprise development.

2.2.4.2.2 Percentages referred to in 2.2.4.3.1 and 2.2.4.4.1 must be implemented as follows:

- (a) Supplier and Enterprise Development must be invested only in a Historically Disadvantaged Persons owned and controlled company with a turnover of less than R50 million per annum;
- (b) Investment on Supplier Development may not be claimed as expenditure on Enterprise Development;
- (c) There must be a written agreement between a mining right holder and the recipient Supplier or Enterprise being developed; and
- (d) The contract between a mining right holder and the recipient supplier must be for a minimum of 5 years.

#### 2.2.5 RESEARCH AND DEVELOPMENT

2.2.5.1 A mining right holder must spend a minimum of 70% of its total research and development budget on South African based research and development entities, either in public or private sector.

#### 2.2.6 PROCESSING OF SAMPLES

2.2.6.1 A mining right holder must use South African based facilities or companies for the analysis of 100% of all mineral samples across the mining value chain.

2.2.6.2 A mining right holder may not conduct sample analysis using foreign-based facilities or companies without the prior written consent of the Minister, as prescribed in the Mining Charter implementation guideline.

## 2.3 HUMAN RESOURCE DEVELOPMENT

Human Resource Development constitutes an integral part of competitiveness, transformation and sustainable growth. Since the mining industry is knowledge-based, the aim of the Mining Charter, 2018, is to

- produce a skilled, trained and diverse workforce to meet the demands of a modern industry;
- develop skills that enhance productivity of the workforce and improve the employment prospects of Historically Disadvantaged Persons; and
- develop entrepreneurial skills that improve people's livelihoods, and create mining-led local and regional economic diversification.

In this regard, a mining right holder must invest a minimum 5% of leivable amount (excluding the statutory skills development levy) on essential skills development. The minimum 5% must be invested in the following manner:

2.3.1 Invest 5% of the leivable amount on essential skills development activities such as science, technology, engineering, mathematics skills, as well as artisans, internships, learnerships, apprentices, bursaries, literacy and numeracy skills for employees and non-employees (community members), graduate training programmes, research and development of solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation.

2.3.2 Employees contemplated in paragraph 2.3.1 exclude directors and executives.

2.3.3 The skilling and research investment referred to in paragraph 2.3.1 must be apportioned in line with national or provincial demographics.

## 2.4 EMPLOYMENT EQUITY

The intention of this tool is to achieve equity in the workplace. Hence the promotion of equal opportunity and fair treatment in employment to eliminate unfair discrimination; the implementation of affirmative action measures to redress disadvantages experienced by designated groups; and ensuring equitable representation in all occupational levels of the workforce.

Consistent with the Employment Equity Act, workplace diversity and equitable representation at all levels are catalysts for social cohesion, transformation and competitiveness. To create a diverse workplace, as well as ensure participation of Historically Disadvantaged Persons at all decision-making positions; and core occupational categories in the mining industry, a mining right holder must achieve a minimum threshold of Historically Disadvantaged Persons that reflects the provincial or national demographics in the following manner:

### 2.4.1 BOARD

2.4.1.1 A minimum of 50% Historically Disadvantaged Persons with exercisable voting rights, proportionally represented in terms of provincial or national demographics, 20% of which must be women.

### 2.4.2 EXECUTIVE MANAGEMENT

2.4.2.1 A minimum of 50% Historically Disadvantaged Persons at the executive director level as a percentage of all executive directors proportionally represented in terms of provincial or national demographics, 20% of which must be women.

### 2.4.3 SENIOR MANAGEMENT

2.4.3.1 A minimum of 60% Historically Disadvantaged Persons in Senior Management proportionally represented in terms of provincial or national demographics, 25% of which must be women.

#### **2.4.4 MIDDLE MANAGEMENT**

- 2.4.4.1 A minimum of 60% of Historically Disadvantaged Persons in Middle Management proportionally represented in terms of provincial or national demographics, 25% of which must be women.

#### **2.4.5 JUNIOR MANAGEMENT**

- 2.4.5.1 A minimum of 70% Historically Disadvantaged Persons in Junior Management proportionally represented in terms of provincial or national demographics, 30% of which must be women.

#### **2.4.6 EMPLOYEES WITH DISABILITIES**

- 2.4.6.1 A minimum of 1.5% employees with disabilities as a percentage of all employees, reflective of national or provincial demographics.

#### **2.4.7 CORE AND CRITICAL SKILLS**

- 2.4.7.1 A mining right holder must ensure that a minimum of 60% Historically Disadvantaged Persons are represented in the mining right holder's core and critical skills by diversifying its existing skills pool. Core and critical skills must include science, technology, engineering and mathematical skills representation across all organisational levels. To achieve this, a mining right holder must:

- 2.4.7.1.1 Identify and implement its existing skills pool in line with the approved Social and Labour Plan.
- 2.4.7.1.2 The abovementioned implementation must be reflective of the demographics.

#### **2.4.8 CAREER PROGRESSION (ALIGNED WITH SOCIAL AND LABOUR PLAN)**

- 2.4.8.1 A mining right holder must develop and implement a career progression plan consistent with the demographics of the country by providing the following:
- 2.4.8.1.1 Career development matrices of each discipline (inclusive of minimum entry requirements and timeframes);
  - 2.4.8.1.2 Individual development plans for employees;
  - 2.4.8.1.3 An identified talent pool to be fast tracked in line with the needs; and
  - 2.4.8.1.4 A comprehensive plan with targets, timeframes and implementation framework.
- 2.4.8.2 The above prescribed board and executive management targets must include BEE shareholders; in line with the MPRDA's and Mining Charter, 2018 objectives for Historically Disadvantaged Persons' active participation in the management and control of the mining industry. The targets indicated under this element may change to address employment equity measures.

#### **2.5 MINE COMMUNITY DEVELOPMENT**

Mine communities form an integral part of mining development, which requires a balance between mining and mine community's socio-economic development needs. A mining right holder must meaningfully contribute towards Mine Community Development; with a bias towards mine communities both in terms of impact and size, and in keeping with the principles of the social license to operate.

- 2.5.1 Therefore, a mining right holder must, in consultation with relevant municipalities, mine communities, traditional authorities and affected stakeholders, identify developmental priorities of mine communities. The identified developmental priorities must be contained in the prescribed and approved Social and Labour Plan of a mining right holder.
- 2.5.2 Mining right holders operating in the same area, may collaborate on identified projects to maximise the socio-economic developmental impact, in line with their approved Social and Labour Plans. Approved Social and Labour Plans must be

published in English and a dominant language(s) commonly used within the mine community.

- 2.5.3 For purposes of implementing the Social and Labour Plans and Mine Community Development projects the term “Mine Community” refers to communities where mining takes place, major labour sending areas, adjacent communities within a local municipality, metropolitan municipality or district municipality.
- 2.5.4 A mining right holder must implement 100% of Social and Labour Plan commitments in any given financial year of the mining right holder. Any amendments/variation of Social and Labour Plan commitments, including the budget, shall be approved in terms of section 102 of the MPRDA and consulted with mine communities.

## 2.6 HOUSING AND LIVING CONDITIONS

Human dignity and privacy of mine employees remain hallmarks towards enhancing productivity and expediting transformation in the mining industry, in terms of housing and living conditions. In this regard, mining companies must improve the standard of housing and living conditions of mine employees, as stipulated in the Housing and Living Conditions Standard for the Mining and Minerals Industry, developed in terms of Section 100 of the MPRDA. The Standard provides, amongst others, the following principles:

### 2.6.1 PRINCIPLES OF HOUSING CONDITIONS

- Decent and affordable housing;
- Provision for home ownership;
- Provision for social, physical and economic integration of human settlements; and
- Secure tenure for mine employees in housing institutions.

## 2.6.2 PRINCIPLES OF LIVING CONDITIONS

- Proper healthcare services;
- Affordable, equitable and sustainable health system, and
- Balanced nutrition.

A mining right holder shall be required to submit a Housing and Living Conditions Plan to be approved by the Department, after consultation with organised labour and the Department of Human Settlements. The Housing and Living Conditions Standard shall be reviewed to provide clear targets and timelines for the implementation of the aforementioned housing and living conditions principles.

A mining right holder must comply with the Housing and Living Conditions Standard; ensure maintenance of single units, family units and any other arrangement agreed to with employees; pending the finalisation of the Reviewed Housing and Living Conditions Standard.

### 3. REGIME FOR JUNIOR MINERS

This part applies to a mining right granted after commencement of the Mining Charter, 2018. Its applicability is limited to a mining right holder with a single or multiple mining rights; having a combined annual turnover of less than 150 Million Rands; used to determine the appropriate qualifying criteria as outlined in the table below;

<b>QUALIFYING CRITERIA</b>	<b>EXEMPT FROM THE FOLLOWING ELEMENTS/TARGETS</b>	<b>REQUIRED TO COMPLY WITH THE FOLLOWING ELEMENTS/TARGETS</b>
Annual turn-over of less than 10 Million Rands		Ownership undefined.
	Employment Equity less than 10 employees.	Employment Equity 10 or more employees.
	Inclusive Procurement, Enterprise and Supplier Development.	Human Resource Development. Mine Community Development.
An annual turn-over of 10 million Rands to 150 Million Rands.		Ownership undefined.
		Human Resources Development
		Inclusive Procurement.
		Employment Equity at group level.
		Mine Community Development.

#### **4. APPLICATION OF THE MINING CHARTER TO LICENCES GRANTED UNDER THE PRECIOUS METALS ACT, 2005 AND THE DIAMONDS ACT, 1986**

The Diamonds Act, 1986 and the Precious Metals Act, 2005 provide for the South African Diamond and Precious Metals Regulator (SADPMR) to have regard to the requirements of the Mining Charter, 2018 when considering applications lodged in terms of these Acts.

##### **4.1 APPLICATION AND DEFINITION OF CONCEPTS**

- 4.1.1 For purposes of this part, definitions and Clause 2 shall apply with the necessary changes;
- 4.1.2 Any reference in definitions and Clause 2 of the Mining Charter, 2018 to:
  - 4.1.2.1 Mine Community Development Element must be construed as reference to Socio Economic Development;
  - 4.1.2.2 Mining goods must be construed as reference to capital goods and consumables;
  - 4.1.2.3 Mining right holder must be construed as reference to a licence or permit issued in terms of the Precious Metals Act and the Diamonds Act;
- 4.1.3 The targets and elements of the Mining Charter, 2018 shall therefore apply to licences under these Acts in line with the table below.
- 4.1.4 Recognising the extent of the exemption in terms of the tables below, a permit or licence holder in terms of the Precious Metals Act and the Diamonds Act shall comply with relevant elements and targets as set out in the Mining Charter, 2018.

**4.2 THRESHOLD FOR PRECIOUS METALS JEWELLERS AND PRECIOUS METALS BENEFICIATORS**

CATEGORY/SIZE OR CLASS	QUALIFYING CRITERIA	EXEMPT FROM THE FOLLOWING TARGETS	REQUIRED TO COMPLY WITH THE FOLLOWING TARGETS
Exempted Micro Enterprises (including students).	Estimated max turnover less than R1 Million.	All Mining Charter Elements and targets.	None.
Small Enterprises.	Estimated max turnover R1 Million to R50 Million.	Socio Economic Development Element.	Ownership: Undefined
		Inclusive Procurement, Supplier and Enterprise Development Element.	Human Resources Development Element.
		Employment Equity Element (in respect of businesses with less than 10 employees).	Employment Equity Element (in respect of businesses with 10 or more employees).
Medium to larger Enterprises.	Greater than R50 million.	None.	All the elements of the Mining Charter.

#### 4.3 THRESHOLDS FOR DIAMOND BENEFICIATORS

CATEGORY/SIZE OR CLASS	QUALIFYING CRITERIA	EXEMPT FROM THE FOLLOWING TARGETS	REQUIRED TO COMPLY WITH THE FOLLOWING TARGETS
Small Enterprises.	Turnover of less than R50 Million.	Socio Economic Development Element.	Ownership Element: Undefined
		Employment Equity Element (in respect of businesses with less than 10 employees).	Human Resources Development Element.
			Employment Equity Element (in respect of businesses with 10 or more employees).
Medium to larger Enterprises.	Turnover greater than R50 million.	None.	Inclusive Procurement, Supplier and Industry Related Enterprise Development Element.
			All the elements of the Mining Charter.

#### 4.4 THRESHOLDS FOR DIAMOND DEALERS, AND PRECIOUS METALS REFINERS.

CATEGORY/SIZE OR CLASS	QUALIFYING CRITERIA	EXEMPT FROM THE FOLLOWING TARGETS	REQUIRED TO COMPLY WITH THE FOLLOWING TARGETS
All categories, classes and sizes.	None.	None.	All elements of the Charter.

## 4.5 APPLICATION OF THE OWNERSHIP, INCLUSIVE PROCUREMENT, ENTERPRISE AND SUPPLIER DEVELOPMENT AND SOCIO-ECONOMIC DEVELOPMENT ELEMENTS

### 4.5.1 OWNERSHIP

- 4.5.1.1 In line with the Government policies to encourage beneficiation of the country's mineral resources, the ownership target for the downstream diamonds and precious metals jewellers and diamond benefic平ators is a minimum of 26% shareholding for Historically Disadvantaged Persons.
- 4.5.1.2 The 26% BEE shareholding must be distributed in the following manner:
  - 4.5.1.2.1 A minimum of 10%, of which 5% is a non-transferable carried interest, to qualifying employees from the effective date of a licence or permit.
  - 4.5.1.2.2 A minimum of 16% shares to a BEE entrepreneur.
- 4.5.1.3 The 30% BEE shareholding by diamond dealers, and precious metals refiners must be distributed as follows:
  - 4.5.1.3.1 A minimum of 10%, of which 5% is a non-transferable carried interest, to qualifying employees from the effective date of a licence or permit.
  - 4.5.1.3.2 A minimum of 20% shares to a BEE entrepreneur.
- 4.5.1.4 Where a refiner is also a mining right holder and claims the same BEE shareholders as those claimed in terms of the mining right, the flow through principle applies.

### 4.5.2 SOCIO-ECONOMIC DEVELOPMENT

- 4.5.2.1 The licence holder must contribute 1% NPAT towards socio-economic development.
- 4.5.2.2 Projects identified for socio economic development must be published in English and one other language.

#### **4.5.3 INCLUSIVE PROCUREMENT AND ENTERPRISE DEVELOPMENT**

- 4.5.3.1 Enterprise development for a licence or permit issued in terms of the Diamonds Act or the Precious Metals Act is compulsory and a ring-fenced element.
- 4.5.3.2 Enterprise development under this section must be industry-related and approved by the South African Diamonds and Precious Metals Regulator.
- 4.5.3.3 A licence or permit holder required to comply with this element, as per the thresholds provided for above, must submit a five-year plan indicating progressive implementation of the approved enterprise development.
- 4.5.3.4 A licence or permit holder's performance on enterprise development must be reported, audited and verified annually against the approved five-year plan.

#### **5. REPEAL OF SECTION/PARAGRAPH 3 OF THE CODES OF GOOD PRACTICE FOR THE MINERALS INDUSTRY**

Clause 3 of the Codes of Good Practice for the Minerals Industry published in Government Gazette No. 32167 of 29 April 2009 is hereby repealed.

#### **6. REPORTING (MONITORING AND COMPLIANCE)**

##### **6.1 REPORTING BY MINING RIGHT HOLDERS**

A mining right holder must report its level of compliance with the Mining Charter, 2018 annually, as provided for by Section 28 (2) (c) of the MPRDA. The Department shall monitor and evaluate implementation, cognisant of the impact of material constraints that may result in the non-achievement of the set target.

## 6.2 REPORTING BY HOLDERS OF LICENCES OR PERMITS ISSUED IN TERMS OF THE DIAMONDS ACT AND THE PRECIOUS METALS ACT

A holder of a licence or permit issued in terms of the Diamonds Act or the Precious Metals Act must annually report its level of compliance with the Mining Charter, 2018 to the South African Diamonds and Precious Metals Regulator. The SADPMR shall monitor and evaluate implementation, cognisant of the impact of material constraints that may result in the non-achievement of the set target.

## 7. APPLICABILITY OF THE MINING CHARTER

7.1 The Mining Charter, 2018 applies to existing mining rights, pending mining right application, new mining rights, existing licences and permits issued in terms of the Diamonds Act and Precious Metals Act and new licences and permits issued in terms of the Diamonds Act and the Precious Metals Act as provided for herein.

7.2 For Mining right holders, the Ownership and Mine Community Development elements are ring-fenced, requiring 100% compliance at all time.

7.3 For holders of licences or permits issued in terms of the Diamonds Act and the Precious Metals Act, the Ownership and Inclusive Procurement, Supplier and Enterprise Development elements are ring-fenced elements requiring 100% compliance at all time.

## 8. TRANSITIONAL ARRANGEMENTS

A mining right holder must progressively align existing targets from the Mining Charter, 2010 targets within the transitional period, to meet the revised requirements as follows:

8.1 Five (5) years for the inclusive procurement element. A mining right holder must within six (6) months from the date of publication of the Mining Charter, 2018 submit a five-year plan indicating progressive implementation of inclusive procurement targets.

8.2 Compliance with procurement targets within the transitional period shall be as follows:

- 8.2.1 **Mining Goods:** The first-year target is set at 10% of the procurement budget, second year 20% of the procurement budget, 35% of the procurement budget by third year, 50% of the procurement budget by fourth year and 70% of the procurement budget by fifth year.
- 8.2.2 **Services:** The first-year target is set at 70% of the procurement budget, second year 80% of the procurement budget.
- 8.2.3 The use of coding system for verification of local content shall be applicable once finalised by the Department of Trade and Industry.
- 8.3 Five (5) years for the Employment Equity element. A mining right holder must within a period of six (6) months from the date of publication of the Mining Charter, 2018 submit a five-year plan indicating progressive implementation of the provisions of Employment Equity element targets.
- 8.4 A mining right holder must comply with the Housing and Living Conditions Standard and ensure that it maintains single units, family units and any other arrangements agreed to with employees, pending the finalisation of the Reviewed Housing and Living Conditions Standard.
- 8.5 At the end of the transition period, a mining right holder must comply with the Mining Charter, 2018 targets as provided for in the respective elements.
- 8.6 A mining right holder's performance shall be reported, audited and verified annually against each element in respect of implementation for the applicable transitional period.

## 9. NON-COMPLIANCE

- 9.1 A mining right holder who has not complied with the ownership element and falls between levels 6 and 8 of the Mining Charter scorecard shall be in breach of the MPRDA and subject to provisions of section 93, read in conjunction with section 47, 98 and 99 of the Act.
- 9.2 A licence or permit holder who has not complied with the requirements of this Mining Charter shall be in breach of the Diamonds Act and the Precious Metals Act and subject to relevant provisions of the Diamonds Act and the Precious Metals Act.

## 10. REVIEW OF THE CHARTER

The Minister may, by notice in the Gazette, review the Mining Charter, 2018.

## 11. REPEAL OF PREVIOUS MINING CHARTERS

The Broad-Based Socio-Economic Empowerment Charter for the Mining Industry published in 2004, as amended in 2010; and the Broad-Based Socio-Economic empowerment Charter for the Mining and Minerals Industry published in 2017 are hereby repealed.

## 12. INTERPRETATION OF THE MINING CHARTER

12.1 Any reasonable interpretation, which is consistent with the objects of the Mining Charter, 2018 and the MPRDA, must be preferred over any other interpretation that is inconsistent with such objects; when interpreting a provision of the Mining Charter, 2018.

12.2 The Mining Charter must be read together with the Implementation Guidelines to be gazetted within two months from the date of gazetting of the Mining Charter, 2018.

### 13. SCORECARD

Reviewed Mining Charter Scorecard	Weighting %
Ownership	Y/N
Mine Community Development	Y/N
Housing and Living Conditions	Y/N
Employment Equity	30%
Procurement supplier & Enterprise Development	40%
Human Resource Development	30%
<b>Total</b>	<b>100%</b>

## OWNERSHIP

### New Mining Rights

Element	ELEMENT DESCRIPTION	COMPLIANCE TARGET (%)	MEASURE	WEIGHT (%)
Ownership	Minimum target for representation of Historically Disadvantaged Persons ownership.	30% BEE shareholding	<p>A minimum of 5% non-transferable carried interest to qualifying employees from the effective date of a mining right.</p> <p>A minimum of 5% equity equivalent benefit as defined herein or 5% carried interest to host communities from the effective date of a mining right.</p> <p>A minimum of 20% effective ownership in the form of shares to Historically Disadvantaged Persons, 5% of which must preferably be for women.</p>	Y/N
	Beneficiation Equity Equivalent mechanism in lieu of BEE shareholding		A maximum of 5 percentage points of BEE shareholding.	
	Meaningful and effective Participation		<p>Net value</p> <p>Voting rights attaching to an equity instrument owned by or held for a participant measured using the Flow through principle or Control Principle</p> <p>Economic interest representing a return on ownership of the entity similar in nature to a dividend right, measured using the Flow Through Principle</p>	

## Existing Mining Rights

ELEMENT	ELEMENT DESCRIPTION	COMPLIANCE TARGET	MEASURE	WEIGHT (%)
Ownership	Minimum target for representation of Historically Disadvantaged Persons.	26%	Meaningful economic participation	Y/N
			Full shareholder rights	

## Pending Applications<sup>1</sup>

ELEMENT	ELEMENT DESCRIPTION	COMPLIANCE TARGET	MEASURE	WEIGHT (%)
Ownership	Minimum target for representation of Historically Disadvantaged Persons ownership.	26%	Net value	Y/N
			Voting rights attaching to an equity instrument owned by or held for a participant measured using the Flow through principle or Control Principle	
			Economic interest representing a return on ownership of the entity similar in nature to a dividend right, measured using the Flow Through Principle or Control Principle	

<sup>1</sup> All pending applications will be required to top-up from 26% to 30% HDP ownership within the 5 year transitional period provided in terms of Clause 2.1.2.

## INCLUSIVE PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT SCORECARD<sup>2</sup>

Element	ELEMENT DESCRIPTION	COMPLIANCE TARGET (%)	MEASURE	WEIGHT (%)
<b>Inclusive Procurement</b>	Total procurement budget spend on goods and services	Procure 70% locally manufactured mining goods with a 60 % local content	21% of total mining goods procurement budget must be spent on South African manufactured goods produced by Historically Disadvantaged Persons owned and controlled company	5%
			5% of total mining goods procurement budget must be spent on South African manufactured goods produced by women owned and controlled company or youth owned and controlled company; and	5%
			44% of total mining goods procurement budget must be spent on South African manufactured goods produced by BEE compliant company.	5%
	80% Services		50% of the total services budget must be spent on services supplied by Historically Disadvantaged Persons	5%
			15% of total services budget must be spent on services supplied by women owned and controlled companies	5%
			5% of total services budget must be spent on services supplied by the youth owned and controlled companies	5%
			10% of total services budget must be spent on services supplied by a BEE compliant company.	5%
	Research & Development		A minimum of 70% of total research and development budget to be on South African based research and development entities.	2.5%
	Sample Analysis		Utilise South African based facilities or companies for the analysis of 100% of all mineral samples across the mining value chain	2.5%

<sup>2</sup> See transitional arrangements for progressive targets to be met during the transitional period.

**EMPLOYMENT EQUITY**

Element	Element Description	Compliance Target (%)					Measure	Weight (%)
Employment Equity	<b>BOARD</b>							
		Blacks	Indians	Coloureds	Whites	Foreign Nationals		
	Total no of Directors							
	Total representation						50%	2%
	Female representation						20%	2%
	<b>EXECUTIVE MANAGEMENT</b>							
		Blacks	Indians	Coloureds	Whites	Foreign Nationals		
	Total no of employees							
	Total representation						50%	4%
	Female representation						20%	3%
	<b>SENIOR MANAGEMENT</b>							
		Blacks	Indians	Coloureds	Whites	Foreign Nationals		
	Total no of employees							
	Total representation						60%	3%
	Female representation						25%	3%
	<b>MIDDLE MANAGEMENT</b>							
		Blacks	Indians	Coloureds	Whites	Foreign Nationals		
	Total no of employees							
	Total representation						60%	2%
	Female representation						25%	2%
	<b>JUNIOR MANAGEMENT</b>							
		Blacks	Indians	Coloureds	Whites	Foreign Nationals		
	Total no of employees							
	Total representation						70%	2%
	Female representation						30%	2%

Element	ELEMENT DESCRIPTION	COMPLIANCE TARGET (%)					MEASURE	WEIGHT (%)
		Blacks	Indians	Coloureds	Whites	Foreign Nationals		
<b>EMPLOYEES WITH DISABILITIES</b>	Total no of employees						1,5%	2%
	Total representation							
	Female representation							
	<b>CORE AND CRITICAL SKILLS</b>							
	Total no of employees						60%	3%

## HUMAN RESOURCE DEVELOPMENT

Element	ELEMENT DESCRIPTION	COMPLIANCE TARGET (%)	MEASURE	WEIGHT (%)
Human Resource Development	HRD expenditure as percentage of total annual leviable amount (excl. mandatory skills development levy).	5% leviable amount	Invest 5% of the leviable amount as defined in the HRD element in proportion to applicable demographics (employees and non-employees).	30%

## MINE COMMUNITY DEVELOPMENT

Element	ELEMENT DESCRIPTION	COMPLIANCE TARGET (%)	MEASURE	WEIGHTING (%)
<b>Mine Community Development</b>	Meaningful contribution towards Mine Community Development with biasness towards mine communities both in terms of impact, in keeping with the principles of the social license to operate.	100% compliant with approved SLP commitments	Publish the SLP in 2 languages (Dominant one in the community & English)	Y/N
			Implement all approved commitments in the SLP	

## HOUSING AND LIVING CONDITIONS

Element	ELEMENT DESCRIPTION	COMPLIANCE TARGET (%)	MEASURE	WEIGHTING (%)
Housing and Living Conditions	Improvement the standard of housing and living conditions of mine employees	100% compliant with Housing and Living Conditions Standard commitments	Implement all Housing and Living Conditions commitments in the Standard	Y/N

## 14. ANNEXURE A

This annexure provides an alignment between the DTI BBEEE and DMR scorecard.

DTI LEVELS	DMR SCORECARD	Ring Fenced Element + percentage weighting
Level 1	Ring fenced Element + 100%	
Level 2	Ring fenced Element+ 80 -100%	
Level 3	Ring fenced Element + 70-80%	
Level 4	Ring fenced Element + 60-70%	Compliant
Level 5	Ring fenced Element + 50-60%	
Level 6	Ring fenced Element + 40-50%	<50 %
Level 7	Ring fenced Element + 30 -40%	Non- Compliant
Level 8	Ring fenced Element + 20 -30%	
Non-Compliant	Ring fenced Element + <20%	
Non-Compliant	Ring fenced Element not met + weighted element score	