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**DRAFT BLACK ECONOMIC
EMPOWERMENT CHARTER
FOR THE ICT SECTOR**

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INTRODUCTORY COMMENTS BY THE CHAIRPERSON OF THE ICT CHARTER STEERING COMMITTEE

At a workshop held at NEDLAC on 9 November 2004, participants agreed that the final document adopted by the ICT Working Group in October 2004 would be used as a base document for the finalisation of the ICT BEE Charter. An all-inclusive ICT Charter Steering Committee comprising representatives from Labour, Community, ICASA, Government, Industry Representatives from IT, Electronics, Telecommunications and Broadcasting and representatives of the Working Group was established. The ICT Working Group handed over the finalisation of the Charter to the ICT Charter Steering Committee.

The ICT Charter Steering Committee identified the following issues as requiring further deliberation and conclusion:

Equity

Governance and Double Jeopardy

Multinationals

Scorecard and Ranking Methodology

Corporate Social Investment

Harmonisation of the ICT charter with the Department of Trade and Industry's proposed Codes of Good Practice.

The Steering Committee concluded its deliberations on these outstanding issues and the results of those deliberations were reflected in the Draft Charter published on 07 April 2005. Oral hearings in response to this draft were held on the 18th, 19th and 20th of April 2005. Having considered the submissions made at the oral hearings, the Steering Committee finalized the Draft Charter. The Steering Committee further decided that there are issues that would best be handed over to the ICT Council.

The Draft Charter, for purposes of alignment and harmonisation draws extensively from the Draft Codes of Good Practice currently being finalised by the Department of Trade and Industries. Once the draft Codes of Good Practice are finalised, consequential amendments will be made to this Draft Charter so as to ensure alignment and harmonisation.

This final Draft Charter shall be submitted to Government for consideration and publication as a sector Code of Good Practice in terms of section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003. Section 9(5) of that Act requires that the Minister publish the Draft Charter in the government gazette and grant interested persons a period of at least 60 days to comment. Thereafter the Draft Charter will be finalised as a Code of Good Practice for the ICT sector.

The Steering Committee expects that the Final Charter (published as a Code of Good Practice) will be in operation by the second half of 2005.

The ICT Charter Steering Committee wishes to express its sincere thanks to all those who participated in this process and contributed to the development of the final Draft Charter.

JOE MJWARA
CHAIRPERSON - ICT CHARTER STEERING COMMITTEE
03 May 2005

PREAMBLE

We, the ICT Sector stakeholders comprising of the Broadcasting, Electronics, IT and Telecommunications sub-sectors; and participants from the social partners, namely Government, Labour, Community, and ICASA, having initiated a process of developing a Black Economic Empowerment Charter, note the following:

- Under the previous apartheid system, a plethora of policies and legislation was promulgated with the sole objective of denying black people, including black women, access to and control of South Africa's economic productive resources and skills based purely on race and gender considerations;
- A decade after the demise of this apartheid system, and in spite of the promulgation of a broad range of policy and legislative instruments introduced by the new democratic government aimed at redressing the imbalances of the past, the vast majority of South Africans are still excluded from ownership and control of economic productive assets and possession of strategic skills to the detriment of economic development, employment creation and poverty eradication;
- Growth and prosperity in South Africa's economy has not been realized to its full potential due to a lack of meaningful participation by the vast majority of black South Africans, including black women, in the national economy, and particularly in the ICT sector;
- The Broad Based Black Economic Empowerment Act 53 of 2003 (BBBEE Act) and government's Black Economic Empowerment Strategy, aims to address inequities resulting from the systematic exclusion of black people from meaningful participation in the economy by developing sector specific transformation charters.

Recognising the cross cutting nature of Information, Communication and Technology (ICT), and its role in the social and economic development of our country;

Therefore, We, the ICT Sector stakeholders, resolve and commit to:

- The objectives of the BBBEE Act and to promote its effective implementation in the ICT sector;
- Bridge the "digital divide" by actively promoting access to ICT's; stimulate and support growth in the ICT sector;
- Advance economic and social transformation in the ICT sector;
- Contribute towards the reduction of unemployment and poverty alleviation;
- Support skills development and training initiatives;
- Foster equity and address the legitimate economic aspiration of all South Africans; and
- Provide an enabling environment conducive to transparency, fairness, and consistency when adjudicating on matters related to BEE in the ICT sector.

Having initiated the process of developing the BEE Charter for the ICT sector, we therefore propose this ICT Charter to be adopted as a Code of Good Practice for the ICT sector in terms of the BBBEE Act, 2003.

CHAPTER 1

DEFINITIONS, MEANINGS AND INTERPRETATIONS

1. In this Charter, unless the context indicates otherwise, the following words shall have the following meanings: -
 - 1.1. **“Accredited BEE Rating Agencies”** means enterprises that have been accredited by SANAS on behalf of the dti to provide an independent opinion on the broad-based black economic empowerment status of enterprises;
 - 1.2. **“Advisory Council”** means the Black Economic Advisory Council established by section 4 of the Broad-based Black Economic Empowerment Act of 2003;
 - 1.3. **“Affirmative or Preferential Procurement”** means specific procurement policies, which are, targeted procurement of commercial goods and services from enterprises owned by black persons disadvantaged by unfair discrimination on the basis of race, gender or disability, among other things;
 - 1.4. **“Black Economic Empowerment (BEE)”** means an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country's economy, as well as significant decreases in economic inequalities;
 - 1.5. **“BEE Scorecard”** means a scorecard for the measurement of broad-based black economic empowerment for a particular enterprise as set out in this Charter.
 - 1.6. **“Beneficially owned or beneficially interested”** in relation to a share or like instrument, shall include, without limitation, the right to receive dividends and capital contributions in respect of, and exercise the votes attached to, that share or like instrument;
 - 1.7. **“Black people”, “black persons”, or “blacks”** are generic terms, which mean Africans, Coloureds, and Indians who are South African citizens by birth or who have obtained citizenship prior to 27 April 1994. This term does not include juristic persons or any form of enterprise other than a sole proprietor
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 - 1.8. **“Black designated groups”** means black people who are also workers, youth, people with disabilities or people living in rural areas
 - 1.9. **“Black-empowered enterprise”** means an entity that is at least 25, 1% owned by black persons and where there is substantial management control by black persons;
 - 1.10. **“Black engendered enterprise (black women owned enterprise)”** means an entity with at least 25.1% representation by black women within the black equity and management portion.
 - 1.11. **“Black enterprise”** means an entity that is at least 50,1% owned by black persons and where there is substantial management control by black persons. Ownership refers to economic interest, whilst management refers to the membership of any board or similar governing body of the enterprise;
 - 1.12. **“Black women”** means black people that are women

- 1.13. **"Broad-based Black Economic Empowerment"** means the economic empowerment of all black people, including black women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies; that include, but are not limited to: -
- 1.13.1. increasing the number of black people that manage, own and control enterprises and productive assets;
 - 1.13.2. facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
 - 1.13.3. human resources and skills development;
 - 1.13.4. achieving equitable representation in all occupational categories and levels in the workforce;
 - 1.13.5. preferential procurement; and
 - 1.13.6. investment in enterprises that are owned or managed by black people;
- 1.14. **"Broad-based benefit scheme"** means a scheme whereby a trust; a company, as constituted in terms of section 21 of the Companies Act 61 of 1973; a non profit organisation or a voluntary association representing a broad base of beneficiaries (such as a community or a broad-based group of natural persons including, without limitation, women, workers and/or employees, youth, the disabled and people living in rural areas); participates in the equity of enterprise on behalf of targeted beneficiaries for their benefit (whether direct or indirect). This definition shall not include a trust or a voluntary association where same is used for purely commercial reasons unrelated to community or broad-based benefits. For the avoidance of doubt, any employee share scheme or similar scheme which is constituted using a trust; a company constituted in terms of section 21 of the Companies Act 61 of 1973; a non profit organisation or a voluntary association; is deemed to be a broad-based benefit scheme.
- 1.15. **"Broad-based BEE status"** is measured as per the broad-based BEE scorecard in the BEE Code of Good Practice or in a Gazetted industry charter. It is referred to as the BEE progress or status of an economic entity, and the different preferential categories would include:
- (a) Excellent contributor to broad-based BEE – total score of 80% and above;
 - (b) Good contributor to broad-based BEE – total score of 65% to 79.9%
 - (c) Satisfactory contributor to broad-based BEE – total score of 40% to 64.9%
 - (d) Limited contributor to broad-based BEE – total score of below 40%
- 1.16. **"The Codes of Good Practise"** refers to the Codes of Good Practise as contemplated by section 9 of the BBBE Act.
- 1.17. **"Community or broad-based enterprise"** refers to an enterprise that has an empowerment shareholder who represents a broad base of members such as a local community or where the benefits support a target group, for example black women, people living with disabilities, the youth and workers. Shares are held through direct equity, non-profit organisations and/or trusts.
- 1.18. **"Company"** or **"Enterprise"** means persons conducting a business, trade or profession in the Republic of South Africa which is recognised in terms of the laws of the Republic of South Africa, whether or not such enterprise is incorporated;
- 1.19. **"Control"** means the right or the ability to direct or otherwise control the majority of the votes attaching to the shareholders' issued shares, the right or ability to appoint or remove directors holding a majority of voting rights at meetings of the board of directors, as well as the right to control the management of the enterprise;
- 1.20. **"Co-operatives"** means an autonomous association of person united voluntarily to meet their common economic and social needs and aspirations through a jointly owned

and democratically controlled enterprise organised and operated on co-operative principles;

- 1.21. **“Council”** means the ICT Black Economic Empowerment Council envisaged in Chapter 3 of this Charter;
- 1.22. **“Defined benefit funds”** is defined in the Pensions Fund Act no. 24 of 1956 (as amended). The Act defines such post-employment benefit plans as plans under which an enterprise is obliged to provide the agreed benefits to current and former employees.
- 1.23. **“Defined Contribution Funds”** is defined in the Pension Fund Act no. 24 of 1956 (as amended). The Act defines such post-employment benefit plans as plans under which an enterprise and an employee pay fixed contributions into a separate entity or a fund and have no legal or constructive obligation to pay further contributions if the fund does not hold sufficient assets to pay all employee benefits relating to employee service in the current or prior periods.
- 1.24. **“DFIs”** refers to Development Finance Institutions and means finance entities created or funded by a tier of Government. These include, but are not limited to, the DBSA, IDC, Postbank, NEF, Land Bank, Khula, NHFC, the PIC, Umsobonvu Youth Fund, and the Provincial Development Corporations;
- 1.25. **“Digital Divide”** refers to the disparity between those who use and have access to ICT’s and those who do not, and is characterized by a lack of meaningful access to ICT’s primarily because of historical and demographic factors between racial groups, lack of basic literacy, and encompasses the lack of access to ICT infrastructure and services and includes physical, digital, human and social resources and relationships
- 1.26. **“Direct ownership”** or **“Ownership”** means ownership of an equity interest together with control over voting rights attaching to that equity interest. This excludes any share options not yet exercised. For the purposes of this Charter the key elements or criteria for the equity ownership BEE indicator are: -

- (a) Control which is directly related to voting rights attaching to the shares acquired;
- (b) Sharing of risk and reward directly related to capital growth and depreciation (loss); and
- (c) any other legal rights of a shareholder according to South African law.

The ownership indicators on director empowerment relating to unrestricted voting rights, as set out in the scorecard in Appendix “A”) in the enterprise in the hands of either black people or black women will be calculated using the following formula:

$VrS = \frac{\%Vr}{\% VrT} \times WP$
<p>Where</p> <p>VrS is the score achieved for the ownership indicator being measured</p> <p>%Vr is the percentage that unrestricted voting rights (in the hands of black people in the enterprise being measured) hold to the total of all voting rights held by members of the enterprise</p> <p>VrT is the compliance target for voting rights in respect of the applicable ownership indicator being measured, as specified in the scorecard.</p> <p>WP means the weighting points allocated to the applicable ownership</p>

- 1.27. **“Disabled persons”** or **“persons with disabilities”** means black individuals that are limited in one or more functional activities. This may be in seeing, hearing,

communicating, moving, learning or other intellectual and emotional activities. The impairment may be permanent, recurring or transitory. It may be physical, cognitive or psychological;

1.28. **“Discrimination”** shall have the meaning ascribed to it in the Promotion of Equality and Prevention of Unfair Discrimination Act (2000);

1.29. **“dti”** means the Department of Trade and Industry

1.30. **“Economic interest”** means a member’s entitlement to receive any payment from an enterprise, which arises by virtue of the member’s holding any equity interest. Any entitlement of a member to receive any payment consequent to the winding up of an enterprise is expressly included within the definition of economic interest. A member’s entitlement to any payment arising on any other basis shall not be deemed to be an economic interest unless such entitlement is without a commercial rationale or is intended to circumvent the objectives of the Act. Terms and concepts analogous to economic interest include, but are not limited to:

- (a) a shareholder’s entitlement to dividends of a company limited by shareholding or a co-operative society;
- (b) a partner’s entitlement to share in the distributions of a partnership, and
- (c) a beneficiary’s entitlement to share in the distributions of a trading trust.

The ownership indicators on direct empowerment relating to economic interests in the enterprise to which either black people or black women are entitled will be calculated using the following formula:

$EiS = \frac{\% Ei}{\% EiT} \times WP$
<p>Where EiS is the score achieved for the ownership indicator being measured %Ei is the percentage that economic interest (to which members who fall within the category of black people in the enterprise being measured) holds to the total of all economic interest to which all members of that enterprise are entitled EiT is the compliance target for economic interest in respect of the applicable ownership indicator being measured, as specified in the scorecard. WP means the weighting points allocated to the applicable ownership indicator being measured.</p>

The ownership indicators under direct ownership relating to the level of unrestricted entitlement of black people to receive their economic in the enterprise, as a percentage of total ownership will be calculated using the following formula:

$UEiS = \frac{UBEi}{\Sigma Ei} \times WP$
<p>Where UEiS is the score achieved for the ownership indicator in paragraph 4.4.2.4 UBEi is the economic interest to which members who are black people are entitled, which is unrestricted ΣEi is the total of all economic interest (whether restricted or unrestricted) to which all members of the enterprise are entitled WP means the weighting points allocated as specified in the scorecard.</p>

- 1.31. **“Effective date”** means the date to be determined by the Minister by notice in the gazette as the date on which the ICT Charter will become operational and binding on all ICT sector stakeholders;
- 1.32. **“Eligible Procurement”** means all expenditure to acquire goods and/or services, including capital expenditure, but excluding procurement spending where;
- 1.32.1. there is a monopoly or a single supplier prescribed by law,
 - 1.32.2. there is no local supplier, or
 - 1.32.3. the supplier is imposed in terms of a global policy for technical (but specifically not commercial) reasons.
- 1.33. **“Employment Equity”** as defined in the Employment Equity Act (1998) means to promote equal opportunity, and fair treatment in employment through the elimination of unfair discrimination; and implementation of affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce;
- 1.34. **“Enterprise Development”** means the voluntary establishment of and/or support through financial and/or other means for existing and/or new black-owned, and/or black-empowered and/or black engendered SMME’s as well as SMME enterprises owned by marginalized groupings;
- 1.35. **“Equity”** in relation to any form of enterprise, means the capital invested in that enterprise in respect of which the members have a claim against the enterprise or against the other members of that enterprise. Equity does not include any amounts advanced by a member to an enterprise on loan, provided that, in certain circumstances referenced below, the settlement of a loan may be deemed an economic interest, in which case, and for that limited purpose, equity may include such a loan. Analogous terms and concepts include, but are not limited to:
- a) issued share capital in a company limited by shareholding or in a co-operative society,
 - b) the total of members’ interests in a close corporation,
 - c) the total interest of all of the partners in a partnership, and
 - (d) the total capital value of a trading trust or of a sole proprietorship.
- 1.36. **“Equity interest”** in relation to a member, means that portion of the equity which the individual members of an enterprise have as claims against the enterprise or against the other members of that enterprise, as the case may be, expressed as a percentage of the total equity in that enterprise. Analogous terms and concepts include, but are not limited to:
- (a) shares in a company, or similar instruments conferring a right in respect of a company,
 - (b) limited by shareholding or in a co-operative society,
 - (c) members’ interests in a close corporation,
 - (d) a partnership interest in a partnership, and
 - (e) a beneficiary share in a trading trust
- 1.37. **“ESOPs”** refers to Employee Share Ownership Programmes;
- 1.38. **“Executive management”** means those managers who have a significant leadership role in the enterprises, have control over day to day operations, have decision making powers and report directly to the Chief Executive Officer, Managing Director and/or equivalent or the Board of Directors;
- 1.39. **“Fair market value”** shall mean a valuation of an equity interest in an enterprise, determined by a suitably qualified person using the methodology set out in statement

AC133 of the Generally Accepted Accounting Practice applicable in the Republic of South Africa, as amended or substituted from time to time.

- 1.40. **“Financial Sector”** means all classes of financial institutions including banks, long term insurers, short terms insurers, re-insurers, managers of formal collective investment schemes in securities, investment managers and other entities that manage funds on behalf of the public and entities listed as part of the financial index of a licensed exchange and as envisaged by the Financial Sector Charter;
- 1.41. **“Flow through principle”** refers to the principle applied when determining the entitlement of black people, black women, and black designated groups to exercise voting rights in or to share in economic interest of an enterprise, regard is had solely to voting rights and/or economic interest to which black people, black women and black designated groups (as the case may be) who are natural persons are entitled. To the extent that an entitlement to voting rights and or economic interest is held by juristic persons, regard will be had to voting rights and/or economic interest to which black people, black women and black designated groups (as the case may be) who are natural persons are entitled in that juristic person. The same principle will apply throughout the chain of ownership by juristic persons until such time as the chain terminates in the entitlement of a natural person who is a Black person, Black women, Black designated groups (as the case may be) to such Voting Rights and/or Economic Interest.
- 1.42. **“Fronting”** means any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments and this charter;
- 1.43. **“GDP”** means Gross Domestic Product and refers to the market value of all finished goods and services being produced within the borders of a country;
- 1.44. **“Governing body”** means a body whose members’ main tasks consist of determining and formulating policy and strategic planning, or planning, directing and co-ordinating the policies and activities of an enterprise.
- 1.45. **“ICASA”** means the Independent Communications Authority of South Africa established in terms of the ICASA Act (2000);
- 1.46. **“ICT”** means Information and Communication Technology and refers to the combination of manufacturing and services industries that capture, transmit and display data and information electronically (OECD 2002: 18; SAITIS 2000: 3);
- 1.47. **The “Information & Communications Technologies Sector”** shall without in any way limiting the ordinary meaning of the terms, mean the sector in which employers and employees are associated for the carrying on of any one or more of the following activities:

marketing, manufacturing, assembling, servicing, installing, maintaining and/or repairing systems, software, equipment, machines, devices and apparatus, whether utilising manual, photographic, optical mechanical, electrical, electrostatic or electronic principles or any combination of such principles, that are primarily intended for the recording and/or processing and/or monitoring and/or transmission of voice and /or data and/or image and/or text or any combination thereof for use in any one or more of the following activities:

accounting, calculating, data processing, data transmission, duplicating, text processing, document reproduction, document transmission, record keeping and record retrieval, broadcasting or transmission for entertainment or information

purposes of voice and/or image and/or text or any combination thereof and/or; the provision of services relating to the above.

- 1.48. **"ICT Enterprise"** means an enterprise that conducts business at any stage of the value chain of the ICT sector;
- 1.49. **"Indirect ownership scheme"** means any scheme whereby (a) person(s) own(s) an equity interest in an enterprise on behalf of third party beneficiaries and where there is no direct and participative exercise of voting rights by such third party beneficiaries. An indirect ownership scheme includes, without limitation, a broad-based benefit scheme as well as post-employment benefit plans, insurance funds, mutual funds, private equity funds and similar lawful collective schemes.
- 1.50. **"Member"** (in relation to any form of enterprise), is defined as a person having an equity interest in the equity of the enterprise. Analogous terms and concepts include, but are not limited to:
- a) a shareholder of a company limited by shareholding or in a co-operative society,
 - b) a member of a close corporation,
 - c) a partner in a partnership,
 - d) a beneficiary in a trading trust, and
 - e) the sole proprietor in a sole proprietorship.
- 1.51. **"Limited contributor to broad based BEE"** means an entity that achieves a BEE scorecard of less than 40% of the total BEE scorecard set out in this Charter.
- 1.52. **"Minister"** means the Minister of Communications
- 1.53. **"Monopoly"** the power of an entity or enterprise to determine and maintain prices or other key terms and conditions for the sale of its goods and/or services without reference to a market place or the action of competitors
- 1.54. **"Narrow-based BEE (categories of BEE enterprises)"** refers to the categorisation of companies and economic entities by their ownership and management status. These include but are not limited to black enterprises, black empowered enterprises, black engendered enterprises (black women owned enterprises) and community or broad-based enterprises.
- 1.55. **"Organisations of community and development interest"** means those non-governmental organisations identified in terms of clause 9.2.4 of this constitution as representing community interests with an interest in development and reconstruction and which have been admitted as parties of the ICT Council as defined in the National Economic, Development and Labour Council Act 35 of 1994;
- 1.56. **"Organised labour"** means labour as represented by the federations of trade unions that are the founding parties of the ICT Council as defined in the National Economic, Development and Labour Council Act 35 of 1994
- 1.57. **"Regulated Entities"** collectively refers to those ICT enterprise regulated by specific communications legislation, regulations promulgated in terms of that legislation; and authorisations and licences issued by ICASA;
- 1.58. **"Rights limitation"** means a pledge of equity interest by a member pursuant to the acquisition by that member of that equity interest as well as any other legal and/or commercial mechanism implemented in relation to an acquisition of an equity interest to which voting rights and/or economic interests attach, and which is designed to:

- a) reserve to any other person other than the member, the benefits of that equity interest or of the voting right and/or economic interest attached to that equity interest for whatsoever purpose, whether generally or specifically, or for a fixed period, or until, or upon, the occurrence of some event; or
- b) withhold, defer or restrict, in any manner, the exercise of a voting right and/or receipt of economic interest by a member for whatsoever purpose, whether generally or specifically, or for a fixed period, or until or upon the occurrence of some event.

For the avoidance of doubt, a common “put” or “call” option granted by members to other members of the same enterprise will not constitute a rights limitation unless the exercise price of the “call” or “put” option is less than fair market value.

- 1.59. **“Senior Management”** means people who plan, direct and co-ordinate the activities of a business/organization and who have the authority to hire, discipline and dismiss employees;
- 1.60. **“SETA”** means a sector education and training authority established in terms of section 9 (1) of the Skills Development Act 97 of 1998;
- 1.61. **“Skills Development”**, as defined in 2(1) (a) of the Skills Development Act (1998).
- 1.62. **“SMME”** means a small, medium and micro enterprise as defined in the National Small Enterprise Act ;
- 1.63. **“SOE”** or “state owned enterprise” is an enterprise, often a corporation, also referred to as a parastatal, wholly or partially owned by Government;
- 1.64. **“Superannuation scheme”** means a ‘provident fund’, a ‘pension fund’ and a ‘retirement annuity fund’ as defined in Schedule 2 of the Tax Act 58 of 1962.
- 1.65. **“the Act”** means the Broad based Black Economic Empowerment Act, No 53 of 2003
- 1.66. **“Unrestricted”** as used in relation to Voting Rights or Economic Interest means that such Voting Rights and/or Economic Interest (as the case may be) are not subject to a Restriction. For the avoidance of doubt, any lawful arrangement whereby a Member agrees, in writing, to a limitation upon their right to alienate any person of the Equity Interest owned by them for a fixed period of time shall not constitute a Restriction.
- 1.67. **“Voting Right”** (in relation to a member) is the level of control exercised by that member over the affairs of the enterprise. The voting right of a member is expressed as a percentage of the votes to which that member is entitled, over the total number of votes to which all members of that enterprise are entitled at a meeting of the members. Analogous terms and concepts include, but are not limited to:
 - a) the percentage of votes held by a shareholder of a company or a co-operative,
 - b) society at a meeting of the shareholders,
 - c) the percentage of votes held by a member of a close corporation at a meeting of the members, and
 - d) the percentage of votes held by a partner at a partnership meeting.
- 1.68. **“Weighting”** is the percentage of a BEE scorecard allocated to the measurement of a particular element of Broad-Based BEE such as ownership, management, employment equity, etc.

1.69. **“USA”** means the Universal Service Agency as established in terms of the Telecommunications Act (1996),

1.70. **“Youth”** refers to any black person from the ages of 16 and 35

CHAPTER 2:

2. SCOPE AND APPLICATION OF THE CHARTER

- 2.1. This Charter applies to all persons, organisations and entities operating in the ICT Sector in South Africa.
- 2.2. This Charter recognises the existence and powers of the Independent Communications Authority of South Africa (ICASA), an Authority established to regulate Broadcasting and Telecommunications in the public interest.
- 2.3. With regards to the Regulated Entities, ICASA must, in performing its statutory duties, take into account the Code of Good Practice for the ICT sector and the relevant sector Council envisaged therein.
- 2.4. The relevant provisions of the Telecommunications and Broadcasting legislation will enable ICASA to develop regulations relating to Black Economic Empowerment.
- 2.5. The targets of the Charter will be applicable from the effective date until February 2015 and will be reviewed from time to time
- 2.6. The Charter Council will conduct a comprehensive mid-term review in 2010 and make recommendations regarding the implementation of the charter in its second term.

Exemptions

- 2.7. Save as provided below, there shall be no blanket exemptions for any enterprise, company or entity from compliance with the provisions of this Charter.
- 2.8. Government may issue policy directives to the Council on:
 - 2.8.1. the determination of what would be the grounds to be satisfied for the granting of a certificate of approval;
 - 2.8.2. the approved replacement offerings; and
 - 2.8.3. the ratio referred to in clause 2.14.The policy directives to be published may be reviewed and amended from time to time.
- 2.9. The Council may, upon application by an interested party, grant a Certificate of Approval ("the certificate") to:
 - 2.9.1. an ICT enterprise or entity, which could suffer inherent commercial harm to its business due to, amongst others, legal, technological or policy barriers, which are incompatible with the sale of equity.
 - 2.9.2. a SOE, and/or
 - 2.9.3. a SMME, and/or
 - 2.9.4. community entities not for profit.
- 2.10. The applicant seeking a certificate of approval must satisfy certain prerequisites that shall, inter alia, include disclosing total revenues accrued directly or indirectly from South Africa;
- 2.11. Any enterprise or entity, whose application in terms of this section is refused, shall be entitled to lodge an appeal with the Council and such appeal shall be referred to the Minister.

- 2.12. In determining such an appeal, the Minister may seek advice from the BEE Advisory Council on the best mechanism for the resolution of the dispute within a reasonable time period.
- 2.13. Any entity that has been granted a certificate of Approval would be required to substitute any exemption with approved replacement offerings in other areas of its operation such as:
 - 2.13.1. Establishing partnerships with black owned, black empowered, black engendered entities or SMMEs' on matters relating to research and development, including intellectual property in the ICT Sector.
 - 2.13.2. Partnering with black owned, black empowered, black engendered entities or SMMEs' in the expansion of manufacturing or assembling plants in South Africa.
 - 2.13.3. Establishing partnerships with black owned, black empowered, black engendered entities or SMMEs' in the location of substantial new investments in South Africa;
 - 2.13.4. Establishing partnerships with black owned, black empowered, black engendered entities or SMMEs' in the placing of substantial new investments in global markets.
- 2.14. Any allocation of points for the approved replacement offerings will be a ratio of the cost of investment to total revenue generated in South Africa
- 2.15. In the case of SMME's; and community entities not for profit, the Council shall from time to time publish the criteria, which must be met before a specific category of enterprises, is exempted as well as the actual extent of such exemption. In every other case, the certificates shall be issued in relation to a specific ICT enterprise on a case-by-case basis.
- 2.16. In the case of SOEs' and upon application by the SOE concerned, a differential approach for all SOE's including core components indicators splits and the total weights shall be determined in line with the provisions of the Code of Good Practice. The exemption of an SOE by the Council will be tailored for specific circumstances of the applicant, taking into account the public or commercial nature of the mandate of such SOE, in respect of the manner in which equity points will be made up.

CHAPTER 3

3. GOVERNANCE

3.1. Establishment and Composition of the Council

3.1.1. An ICT Charter Council will be established to oversee the implementation of the ICT BEE Charter.

3.1.2. The ICT Charter Council may consist of the following members:

- 3.1.2.1. 3 members each from the industry sub-sectors, which include Broadcasting, Electronics, Information Technology and Telecommunications;
- 3.1.2.2. 3 members from the relevant Government departments that interface with the ICT Sector;
- 3.1.2.3. 3 members from organised Labour Federations or Trade Unions;
- 3.1.2.4. 3 members from community;
- 3.1.2.5. Other relevant interest groups participating in the ICT Sector as decided by the Council.

3.2. Participants listed in 3.1.2 shall be appointed to Council by their constituencies and must satisfy the principle of representivity and inclusivity.

3.3. Governing Principles

3.3.1. The Council shall be guided by the following basic principles: -

- 3.3.1.1. Independence;
- 3.3.1.2. Transparency;
- 3.3.1.3. Fairness;
- 3.3.1.4. Good Corporate Governance;
- 3.3.1.5. Consultation and Inclusivity; and,
- 3.3.1.6. Equitable Socio-economic Transformation.

3.4. The powers and functions of the ICT Charter Council will include:

- 3.4.1. provision of guidance on matters affecting BEE in the ICT sector;
- 3.4.2. compilation of reports on the status of broad-based BEE in the ICT sector;
- 3.4.3. sharing of information with approved accreditation agencies relevant to BEE in the ICT sector;
- 3.4.4. as and when in its opinion the circumstances so require, appoint a committee of experts, with a view to assist the Council in the exercise and performance of its powers, functions and duties;
- 3.4.5. engage and advise ICASA and other relevant regulatory entities in the ICT sector on the ICT BEE Code of Good Practice;
- 3.4.6. developing mechanisms and strategies to monitor compliance with the ICT Charter and ICT Code of Good Practise;
- 3.4.7. developing a strategy for consultation with provincial and local stakeholders;
- 3.4.8. formulating guidelines for the allocation of procurement opportunities for provincial and local BEE companies in the various regions;
- 3.4.9. developing a practical manual, with examples, as well as implementing an interactive portal to communicate the basic methods of applying the BEE scorecard;

- 3.4.10. conducting or commissioning research for the purposes of ensuring the effective implementation of the ICT Charter and the Code of Good Practice; and,
- 3.4.11. reporting to Government and the BEE Advisory Council on the implementation of the ICT Charter and Code of Good Practice for the ICT sector.

3.5. Annual Reports

- 3.5.1. The ICT Charter Council will prepare and submit annual reports to DTI and the BEE Advisory Council on:
 - 3.5.1.1. baseline indicators for all the different elements of broad-based BEE;
 - 3.5.1.2. aggregate scores of all indicators of the BEE Scorecard for all enterprises under its jurisdiction;
 - 3.5.1.3. initiatives undertaken by enterprises within the sector; and,
 - 3.5.1.4. other relevant information which would be useful in assessing the state of broad-based BEE in the ICT sector.

3.6. Persons qualified to serve on the Council

- 3.6.1. Any person appointed to the Council must;
 - 3.6.1.1. in the execution of his/her responsibilities, take into account the interests of the broader stakeholders within the ICT sector;
 - 3.6.1.2. be committed to transparency and fairness in the execution of their responsibilities in the Council;
 - 3.6.1.3. act in good faith and in the best interest of the ICT sector as a whole;
 - 3.6.1.4. be committed to the objectives of BEE and socio economic transformation as provided for in the Act and the code of good practice;
 - 3.6.1.5. possess suitable qualifications, expertise and knowledge in the ICT sector;

3.7. Conflict of Interests

- 3.7.1. If a Council member has a personal or financial interest in any matter being discussed by the Council, the member must disclose that interest and withdraw from the Council when that matter is discussed.
- 3.7.2. In dealing with matters of conflict of interest, Council shall take into account the provisions of the relevant legislation.
- 3.7.3. If any Council member fails to declare his/her interest and is present in at a venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings of the Council, the relevant proceedings of the Council will be null and void.

3.8. Date of application of the charter

- 3.8.1. On the effective date of the application of the ICT Charter, the ICT Empowerment Charter Steering Committee shall be dissolved and the implementation phase and all matters incidental thereto shall be handed over to the Council
- 3.8.2. The Councillors shall be deemed to have commenced operation on the effective date of commencement of the ICT Charter.

- 3.8.3. The finalisation of this Chapter shall constitute the main deliverables of the multi sectoral negotiations envisaged to take place under the auspices of the NEDLAC ICT sub-committee during the interim phase.

3.9. The constitution of the council, code of business ethics and corporate governance

- 3.9.1. The Council must discuss and adopt the Constitution of the Council at its first meeting.
- 3.9.2. The first meeting of the Council shall be convened not later than 60 working days after the announcement of the effective date of this Charter.
- 3.9.3. The constitution of the Council may be amended from time to time by the Council.
- 3.9.4. The Council must, in consultation with the BEE Advisory Council and by resolution, formulate rules to further regulate its proceedings.

3.10. Disqualification of members

A person may not be appointed or continue as a Council member if such a person:

- 3.10.1. is an unrehabilitated insolvent; or
- 3.10.2. is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or mentally disordered; or
- 3.10.3. has at any time been removed from an office of trust on account of misconduct; or
- 3.10.4. has been found guilty in terms of the Prevention of Corruption Act.

3.11. Meetings of council

- 3.11.1. The Council shall meet at least once a quarter.
- 3.11.2. The Chairperson of the Council shall, in consultation with other members of the Council, determine the venue and times of such meetings.

3.12. Funding of the council

- 3.12.1. The funding of the activities of the Council shall be in accordance with the relevant provisions of the published Code of Good Practice.
- 3.12.2. The Council shall keep proper accounting records of the monies received and the extent of their expenditure.
- 3.12.3. The Council shall prepare and submit an annual report of its activities including audited financial statements to Government.

3.13. Dispute resolution

- 3.13.1. The parties shall use their best efforts to resolve matters in the furtherance of the objectives of the Charter. In the event of a dispute, the parties shall resort to conciliation, mediation and arbitration;
- 3.13.2. Where matters remain unresolved, the parties undertake to present the dispute in writing to the Council for resolution.
- 3.13.3. The Council shall appoint an arbitrator to adjudicate the dispute and the decision of the arbitrator shall be final and binding on the parties.

3.14. Other administrative matters

- 3.14.1. The Council may appoint such other persons, as it deems necessary, for the effective execution of its responsibilities.

CHAPTER 4

4. ACCESS TO ICT's AND CORPORATE SOCIAL INVESTMENT

- 4.1. The ICT sector recognises that bridging the digital divide requires enterprises to undertake certain obligations in terms of access to ICT's and corporate social investment.
- 4.2. In this regard the Council will liaise with various government departments to ensure that there is supportive infrastructure to support access to ICTs.
- 4.3. While recognising the need for enterprises to contribute to transformation and economic growth, the sector agrees that SMME's will be exempt from directly executing ICT CSI projects. SMME's will be required to contribute 0.75% of PBT to a dedicated fund that will be used to assist rural SMME's or co-operatives.
- 4.4. The ICT sector adopts PBT as measurement of a company's performance for purposes of contributions to be made by the various enterprises in the sector.
- 4.5. In considering the obligations of the enterprises operating within the regulated sub-sector, the Charter takes into account the existing obligations placed on these organisations.

The signatories to this charter undertake to devote:

- **1% of PBT towards provision of ICT's in education, district health systems and those set out in licence conditions; and**
- **0.5% of PBT towards general corporate social investment that enhances the lives of black people.**

CHAPTER 5

5. ENTERPRISE DEVELOPMENT

- 5.1. The ICT sector recognises that key to BEE in the sector is the establishment of a viable entrepreneurial base in the sector.
- 5.2. The sector therefore commits itself to the support and fostering of new and existing black owned, black empowered and black engendered SMME's that are excellent and good contributors to BEE through the following initiatives:
 - 5.2.1. using incubation with the assistance of institutions of higher learning in order to develop sustainable enterprises in the sector;
 - 5.2.2. introducing formal and informal entrepreneurship programmes particularly using available resources in order to support education campaigns;
 - 5.2.3. providing skills development, training and mentoring in order to develop management skills through partnerships and skills transfer.
- 5.3. Measurement of whether an entity is an SMME shall be considered at the time the contract is concluded.

The signatories to this charter undertake to make quantifiable support equal to 5% of eligible procurement spend; in black owned, black empowered and black engendered SMME's that are excellent and good contributors to BEE

CHAPTER 6

6. PREFERENTIAL PROCUREMENT

- 6.1. The ICT sector commits itself to the implementation of strategies to ensure increased procurement from excellent, good and satisfactory BEE contributors.
- 6.2. The ICT sector agrees that a minimum of 30% of the 70% procurement spend should be directed towards black owned, black empowered and black engendered SMME's that are excellent and good contributors to BEE.
- 6.3. The various enterprises in the sector should include as part of their procurement strategies or policies preferential payment cycles for SMME's.
- 6.4. SOE's in the ICT sector acknowledge their role and therefore undertake the highest level of compliance with this Charter, in particular with respect to procurement.
- 6.5. The DTI and the BEE Advisory Council shall ensure that they protect Black SMME's from abuse in the tendering process.
- 6.6. The ICT Charter Council will prepare guidelines on procurement, based on international best practice.

The signatories to this charter undertake to:

- **procure 70% of eligible procurement from excellent, good and satisfactory BEE contributors;**
- **publish and implement favourable payment terms for SMME's of less than or equal to 15 days;**
- **implement a robust, independent verification and reporting mechanisms to avoid fronting.**

A minimum of 30% of the 70% procurement spend should be directed towards black owned, black empowered and black engendered SMME's that are excellent and good contributors to BEE

CHAPTER 7

7. SKILLS DEVELOPMENT

- 7.1. The ICT sector commits itself to Skills Development and undertakes to promote and support the aims and objectives of the Skills Development Act.
- 7.2. In this regard companies should develop mentoring programmes that target black employees especially black designated groups in identified positions for succession planning.
- 7.3. ICT career awareness programmes should be implemented at primary and secondary school levels and such programmes should promote career opportunities in mathematics and science.
- 7.4. Funding should be set aside by the ISETT and MAPPP SETA for high-level training; the funding could be used in order to encourage various training organisations to provide ICT training.
- 7.5. In line with the work of the SETAs', companies should take Learners on for experiential training in the sector.
- 7.6. The Charter Council should devise methods of providing rewards to companies that provide post learnership permanent employment.

The signatories to this charter undertake to:

- **commit 2% of payroll in addition to the current skills development levy for investment in skills development of black people, black women, black youth and black people with disabilities; and**
- **provide learnerships equivalent to 5% of employees.**

CHAPTER 8

8. EMPLOYMENT EQUITY

- 8.1. The ICT sector is committed to the principles of employment equity as enunciated in the Employment Equity Act and is therefore committed to ensuring that BEE accredited companies comply with the requirements of the Employment Equity (EE) Act.
- 8.2. The companies in the sector agree to develop clear job descriptions and set performance criteria to ensure that people are not placed in positions, which give a false impression of their positions, and to prevent window dressing.
- 8.3. In supporting employment equity, companies will prioritise strategic positions or jobs within their organisations for black candidates.
- 8.4. Companies will incorporate diversity management and gender sensitivity programmes in their induction programmes in order to address cultural and other differences in their organisations, which programmes should also include transformation initiatives.
- 8.5. Encourage enterprises that are exempt from compliance with the Employment Equity Act, to submit employment equity data on a voluntary basis in order to assist with the assessment of sector statistics.

The signatories to this charter undertake to:

- **comply fully with the Employment Equity Act as certified by the Department of Labour;**
- **Achieve a target of 50% black people in senior management positions with 30% black women as a % of the former;**
- **Achieve a target of 65% of black people in other management positions with black women being 30% of the former.**

CHAPTER 9

9. MANAGEMENT AND CONTROL

- 9.1. The ICT sector is committed to increased management and control of enterprises by black people.
- 9.2. The sector is committed to the development of black management development programmes that are widely available, affordable and easily accessible to ensure that there is a larger pool of black managers to draw from.
- 9.3. Succession planning policies should be included in an enterprises' employment equity plans and reports.
- 9.4. Each enterprise in the sector shall ensure that it has representative management and control as provided for in this Charter.
- 9.5. Companies shall strive to increase the number of black people, including black women, black youth and people with disabilities in executive management and board positions in the ICT sector.

The signatories to this charter commit to a target of 60% black people in the governing body with black women comprising 50% of the former.

CHAPTER 10

10. EQUITY OWNERSHIP

- 10.1. The sector will work in partnership with DFIs' to ensure that DFIs' fund the development of BEE enterprises. The DFI should further advertise in order to make them visible to SMME's.
- 10.2. In order to ensure that black owned SMME's can receive funding, financial institutions should through the assistance of the Financial Sector Charter consider reviewing their funding criteria and those adopted with respect to SMME's.
- 10.3. The Council should make proposals for the establishment of a special BEE fund to finance the acquisition of equity from established companies in the ICT industry.
- 10.4. The extension of favourable terms in the equity transaction for the inclusion of Black people in the company ownership should be considered as value enhancing to the company.
- 10.5.** Bonus points will be awarded for the extension of favourable terms and financing in equity transactions. The Charter Council will publish guidelines on the calculation of such bonus points.
- 10.6. The Council should prepare guidelines on due diligence processes and valuation methods to determine the value of BEE investments.
- 10.7. In respect of SOEs, the sector agrees that in order for SOE's to qualify under the equity section of the Charter, the requisite target need only be achieved in relation to the non-government total shareholding.
- 10.8. In respect of SOE's that do not discharge public service and are not regulated, such SOE's shall be compelled to partner with other BEE enterprises when tendering for contracts and collectively need to meet a combined black equity ownership target as stipulated in this charter.
- 10.9. Any enterprise or entity, which loses its BEE equity shareholder, through no fault of its own, shall retain its BEE status for a period of 18 months from the date of such loss.
- 10.10 Deferred ownership, where the acquisition of shares is conditional or deferred based on the happening of an uncertain future event shall not be considered as ownership until the happening of the event.

The signatories to this charter commit to an equity target of 30% subject to the following:

- **Superannuation schemes must be taken into account as determined in the Codes of Good Practice;**
- **In the case of listed companies, the prescribed minimum free float (20%) will be excluded from computation of the target, subject to a minimum of 25.1% for the purposes of minority protection;**
- **In the case of SOE's, the target is 30% of that component of equity that is not in government hands;**
- **The computation of black ownership shall be determined on the basis of the flow through principle as per the Codes of Good Practice;**
- **If the rand value of the total BEE stake is in excess of R7.5 billion, then the company will be considered compliant with the equity component of the scorecard.**

CHAPTER 11

11. BALANCED SCORECARD

- 11.1. The ICT BEE Scorecard presents, in a matrix format, the major BEE indicators including their respective targets and weightings. The scorecard only provides quantifiable transformational targets and should be applied in conjunction with all other provisions of this Charter. The balanced scorecard method applies, that is, the total score should be calculated by adding up the scores separately computed in respect of each component. It is therefore possible to over score in certain components and thereby compensate for low scores in other.
- 11.2. **Core Components:** The Core Components column of the scorecard lists all the broad-based aspects of transformation as determined by the Department of Trade and Industry (the dti). It also expands the specifics of these in the "Indicators" columns.
- 11.3. **Indicators:** The indicators outlined in the scoreboard and the respective targets are used to, as accurately as possible, measure transformational requirements and achievements by enterprises in each of the areas indicated therein.
- 11.4. **Targets:** The targets contained in this Charter will be applied from the effective date and shall remain applicable till 2015

11.5. Broad-based BEE Status

The BEE progress or status of an economic enterprise or entity as measured according to the broad-based BEE scorecard in this charter are:

Status	Points
Excellent contributor to broad-based BEE	Total score of 80% and above
Good contributor to broad-based BEE	Total score of 65% to 79.9%
Satisfactory contributor to broad-based BEE	Total score of 40% to 64.9%
Limited contributor to broad-based BEE	Total score of below 40%

11.6. Bonus points

In respect of all scorecard core components it is possible to earn bonus point. In all instances these bonus point are aimed at incentivising enterprises to broaden the effect of their transformation programmes to include any of the following: -

- 11.6.1. Provision of ICT's in rural areas (2 bonus points);
- 11.6.2. Affirmative procurement from enterprises that include people with disabilities who have a minimum of 5% equity participation (2 bonus points);

- 11.6.3. Investment in skills development in high priority areas that include engineering, technical, localised IP, software development and management (6 points);
- 11.6.4. Inclusion of designated groups (in particular persons with disabilities and youth) in management and control (2 bonus points);
- 11.6.5. Involvement of new entrants who are black people in the ownership of enterprises (1 bonus point); and
- 11.6.6. Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest (1 bonus point)
- 11.6.7. Extension of favourable terms and financing (2 bonus points)

ICT BLACK ECONOMIC EMPOWERMENT SCORECARD

Core Components	BEE Elements	Weighting	Indicators	Indicator Weighting	Target	Bonus/Preferential Weighting Provisions
Indirect Empowerment	Access to ICT's and corporate social investment	12%	a) Investment in the following ICT projects as a % of PBT <ul style="list-style-type: none"> (i) Provision of ICT's in Education and/or Provision of ICT's in Health Systems (ii) Provision of ICT's in Health Systems and/or Provision of ICT's in Licence conditions (iii) Provision of ICT's in Licence conditions b) General CSI as a % of PBT	8%	1% PBT	Bonus points will be allocated up to a maximum of 2 points for provision of ICT's referred to in a), in a rural area. 0.25% of such spend shall qualify for 1 bonus point.
	Enterprise Development	11%	Quantifiable support equal to 5% of eligible procurement spend; in black owned, black empowered and black engendered SMMEs' that are excellent and good contributors to BEE	11%	5% of eligible procurement spend	

	Preferential Procurement	20%	<p>a) Affirmative procurement from: i) excellent BEE contributors ii) good BEE contributors iii) satisfactory BEE contributors</p> <p>b) published favourable payment terms for SMME's of less than or equal to 15 days</p> <p>c) Implementation of robust, independent verification and reporting mechanism to avoid fronting</p> <p>Minimum of 30% of the 70% procurement spend must be directed towards black owned, black empowered and black engendered SMMEs' with excellent or good contributions</p>	11.5%	70%	<p>Procurement from excellent contributors (recognized at R1.25 for every R1.00 spend) Procurement from good contributors (recognized as R1.00 for every R1.00 spend) Procurement from satisfactory contributors (recognized at 50c for every R1.00 spend)</p> <p>Bonus points allocated up to a maximum of 2 points for affirmative procurement from enterprises referred to in a) that include disabled persons who have a minimum of 5% equity participation. A bonus point shall be awarded for every 5% of the 70% target spent with such entities.</p>
Human Resource Developments	Skills Development	17	<p>a) Investment in skills development of black people</p> <p>b) Investment in skills development of black women</p> <p>c) Investment in skills development of black people with disabilities</p> <p>d) Investment in skills development of black youth</p> <p>e) Provision of learnerships as a % of employees</p>	6 5 2 2 2	2% of pay roll in addition to the SD levy 5%	<p>Bonus points allocated up to a maximum of 6 points for investment in any of the following high priority areas:</p> <ul style="list-style-type: none"> ▪ Engineering ▪ Technical ▪ Localising IP ▪ Software development ▪ Management <p>A bonus point is awarded for every additional 10% of the 2% target, spent on any or all of the high priority areas.</p>

	Employment Equity	10	<ul style="list-style-type: none"> a) Compliance with EE Act as certified by DOL b) Achievement of set performance targets in respect of <ul style="list-style-type: none"> i) black people in senior management positions ii) black people in other management positions iii) black women in senior management positions as a % of i) iv) black women in other management positions as a % of ii) 	<ul style="list-style-type: none"> 3 3 2 1 1 	<ul style="list-style-type: none"> 100% 50% 65% 30% 30% 	
Direct Empowerment	Management and Control	10	<ul style="list-style-type: none"> a) % black people in the governing body b) % black women in the governing body as a percentage of (a) above 		<ul style="list-style-type: none"> 60% 50% 	<p>Bonus allocated up to a maximum of 2 points for the inclusion of designated groups (disabled and youth)</p> <p>Bonus point awarded for every black person that is a youth or a person with disabilities.</p> <p>CEO, CFO COO and chairperson 2 points and 3 points if that person is a woman.</p> <p>Other executive members 1 point and 1.5 points if that person is a woman</p> <p>Non executive members of the governing body is 0.5 points and 0.75 points where that person is a woman.</p> <p>Maximum score towards target for non-executive level is 10%</p>

	Equity Ownership	20%	<p>To meet the commitments set out in this clause, the signatories to this charter commit to an equity target of 30% subject to the following:</p> <ul style="list-style-type: none"> • Superannuation schemes as provided for in the Codes of Good Practice; • In the case of listed companies, the prescribed minimum free float (20%) will be excluded from computation of the target, subject to a minimum of 25.1% for the purposes of minority protection; • In the case of SOE's, the target is 30% of that component of equity that is not in government hands; • The computation of black ownership shall be determined on the basis of the flow through principle as per the Codes of Good Practice; • If the rand value of the total BEE stake is in excess of R7.5 billion, then the company will be considered compliant with the equity target of the scorecard. <p><u>The equity Indicator must be read in conjunction with the Codes of Good Practice</u></p> <p>a) Unrestricted voting rights in the enterprise in the hands of black people b) Unrestricted voting rights in the enterprise in the hands of black women c) Economic interest in the enterprise to which black people are entitled d) Economic interest in the enterprise to which black women are entitled e) Economic interest in the enterprise to which black designated groups are entitled f) Level of unrestricted entitlement of black people to receive their economic interest in the enterprise (as a % of total ownership)</p> <p>Bonus points a) involvement of new entrants who are black people in the ownership of enterprises b) Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest Extension of favourable terms and financing</p>	30%	
			<p>3 2 4 2 1 8</p>	<p>30% vote 10% 25% 10% 2.5% 25%</p>	
			1 1 2		