
TRUST DEED FOR THE TSHIAMISO TRUST

Deed of trust made and entered into by and between

THE PERSONS LISTED IN SCHEDULE A

(as the Founders of the Trust)

and

THE PERSONS LISTED IN SCHEDULE B

(as the initial Trustees of the Trust)

and

K2018259017 (SOUTH AFRICA) PROPRIETARY LIMITED

(as the Agent)

and

THE PERSONS LISTED IN SCHEDULE C

(as the Claimants' Attorneys)

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SCHEDULES:

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PARTIES:

This Trust Deed is entered into between:

- (1) **the persons listed in Schedule A (the Founders);**
- (2) **the persons listed in Schedule B (the Initial Trustees);**
- (3) **K2018259017 (South Africa) Proprietary Limited (the Agent);** and
- (4) **the persons listed in Schedule C (the Claimants' Attorneys).**

INTRODUCTION

- A. The Class Action Litigation, relating to Silicosis and Tuberculosis, has been instituted by some of the Class Representatives against a number of respondents, including some of the Companies.
- B. The Parties recognise the need to address issues associated with past, present and future compensation for Silicosis and Tuberculosis in the South African gold mining industry.
- C. The Companies and the Settling Claimants (as defined in the Settlement Agreement) intend to settle the claims relating to the Class Action Litigation pursuant to the Settlement Agreement.
- D. The Settlement Agreement contemplates the establishment of a trust. This Trust Deed establishes the trust on the basis of and subject to the terms and conditions detailed in it.
- E. In this context, and in the interests of mineworkers and the stability and productivity of their workforce, the Founders will make contributions to the Trust for the benefit of Eligible Claimants, on the basis of, and subject to, the provisions of this Trust Deed.
- F. This Trust Deed is divided into eight parts, which generally cover the following:
 - a. PART A: the formation and object of the Trust;
 - b. PART B: the amounts payable to Eligible Claimants as Benefits;
 - c. PART C: the funding obligations of the Founders;
 - d. PART D: the processes and functions of the Trust, including:
 - i. the locating of potential Eligible Claimants;
 - ii. the processes of submitting a claim to the Trust, including the submission of documentation, undergoing medical examinations, being Certified as having a Qualifying Disease and processing payment of Benefits; and
 - iii. review and dispute resolution mechanisms;

- e. PART E: appointment and removal of Trustees, their powers and duties, and provisions relating to Trust meetings;
- f. PART F: record keeping, accounts and reports;
- g. PART G: the duration, termination, and ability to amend the Trust; and
- h. PART H: general provisions covering, among other things, the taxation and tax reporting of the Trust and the arbitration processes governing disputes between the Parties.

G. The Founders have procured the formation of the Agent, which shall act as the Founders' agent in relation to certain matters governed by this Trust Deed.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Trust Deed and the preamble above, unless the context requires otherwise:

- 1.1.1 **Accredited Practitioners** means the approved practitioners, and practitioners employed by, or members of, approved medical facilities and bodies, all of which appear on the registry that shall be maintained by the Trustees in terms of clause 12.6.1;
- 1.1.2 **Affiliate** means: (i) in relation to any Person which is a corporate body, any other Person that Controls, is Controlled by or is under common Control with, such Person; and (ii) in relation to any Person who is a natural person, any agent, trustee or representative of such Person;
- 1.1.3 **Agent** means K2018259017 (South Africa) Proprietary Limited, a company registered in accordance with the laws of South Africa under registration number 2018/259017/07;
- 1.1.4 **Annual Contribution Period** means the period commencing on the second anniversary of the Payment Date and terminating on the Termination Date;
- 1.1.5 **Annual Period** means a period of 365 days (or 366 days, in the case of a leap year), the first of which commencing on the Payment Date, and each subsequent period commencing on the day following the expiry of the most recent period and terminating on the day before the 1st (first) anniversary of that subsequent period, provided that the last period shall expire on the Termination Date, regardless of the number of days constituting it;
- 1.1.6 **Approved ODMWA Certificates** means ODMWA Certificates which the Trustees (or persons authorised by the Trustees for that purpose) may from time to time accept for the purposes

of the determinations contemplated in clauses 12.8.2.2.1 and 12.8.2.3.1, provided that they substantially align with the criteria for Qualifying Diseases as stipulated in this Trust Deed and Schedule H; and for the purposes of this clause, an ODMWA Certificate refers to a certificate of finding of the certification committee issued in accordance with ODMWA in the form prescribed in ODMWA and its regulations, which states that the subject of the certificate has first degree silicosis, second degree silicosis, first degree tuberculosis or second degree tuberculosis, but excludes certificates which state that they were issued for silico-tuberculosis or for tuberculosis with the presence of any pneumoconiosis; and

- 1.1.7 **Auditors** means the auditors of the Trust for the time being and from time to time;
- 1.1.8 **Benefits** means the monetary amounts referred to in clause 5.2, adjusted, if applicable, in terms of clauses 5.6, 6 and 7;
- 1.1.9 **Benefit Contributions** means the contributions referred to in clause 8.6.1;
- 1.1.10 **Business Day** means any day other than a Saturday, Sunday or statutory public holiday in South Africa;
- 1.1.11 **Certificate of Medical Finding** means a written determination by the Medical Certification Panel, in accordance with the provisions of clause 12.7, stating:
- 1.1.11.1 in the case of a Lodging Settling Claimant:
- 1.1.11.1.1 whether or not he has a Qualifying Disease;
- 1.1.11.1.2 if it is determined that he has a Qualifying Disease, which Qualifying Disease he has; and
- 1.1.11.1.3 if it is determined that he does not have a Qualifying Disease, that the Lodging Settling Claimant is Medically Ineligible;
- 1.1.11.2 in the case of a Contended Deceased Individual:
- 1.1.11.2.1 whether or not he had a Qualifying Disease;
- 1.1.11.2.2 if it is determined that he had a Qualifying Disease:
- 1.1.11.2.2.1 which Qualifying Disease he had; and
- 1.1.11.2.2.2 that the primary cause of his death is determined to be: (i) Tuberculosis, (ii) Silicosis, or (iii) that the primary cause of death cannot be determined or is neither Tuberculosis nor Silicosis;

- 1.1.11.2.3 if it is determined that he did not have a Qualifying Disease, that the Contended Deceased Individual is Medically Ineligible;
- 1.1.12 **Certification** means a written determination by the Trust Certification Committee:
- 1.1.12.1 that a Settling Claimant who has been issued with a Certificate of Medical Finding, an Approved ODMWA Certificate or a Tuberculosis Certificate qualifies as an Eligible Claimant; or
- 1.1.12.2 that a Dependent Claimant who has been issued with a Certificate of Medical Finding or an Approved ODMWA Certificate in relation to a Deceased Individual qualifies as an Eligible Claimant;
- and of the Benefit that such Eligible Claimant is entitled to claim from the Trust (and **Certified** and **Certify** shall have corresponding meanings);
- 1.1.13 **Certification Reviewing Authority** means the person appointed by the Trustees in terms of clause 12.15.6.1;
- 1.1.14 **Claimants' Agent** means the person referred to in clause 32;
- 1.1.15 **Claimants' Attorneys** means the persons listed in Schedule C;
- 1.1.16 **Claims Lodgement Officer** means the persons appointed by the Trustees and authorised to accept claims in terms of clause 12.5.1;
- 1.1.17 **Class Action Litigation** means the applications for class certification under case numbers 48226/12, 31324/12, 31326/12, 31327/12 and 08108/13 in the South Gauteng High Court, Johannesburg (now known as the High Court of South Africa (Gauteng Local Division, Johannesburg)), which applications were consolidated under case number 48226/12 and thereafter referred to as *Bongani Nkala and Others v Harmony Gold Mining Company Limited and others*;
- 1.1.18 **Class Representatives** shall have the meaning ascribed to it in the Settlement Agreement;
- 1.1.19 **COIDA** means the Compensation for Occupational Injuries and Diseases Act, 1993;
- 1.1.20 **Companies** means (i) **African Rainbow Minerals Limited**, a company registered in accordance with the laws of South Africa under registration number 1933/004580/06, (ii) **Anglo American South Africa Limited**, a company registered in accordance with the laws of South Africa under registration number 1917/005309/06, (iii) **AngloGold Ashanti Limited**, a company registered in accordance with the laws of South Africa under registration number 1944/017354/06, (iv) **Avgold Limited**, a company registered in accordance with the laws of South Africa under registration number 1990/007025/06, (v) **Freegold (Harmony) Proprietary**

Limited, a company registered in accordance with the laws of South Africa under registration number 2001/029602/07, (vi) **Free State Consolidated Gold Mines (Operations) Limited**, a company registered in accordance with the laws of South Africa under registration number 1937/009266/06, (vii) **Gold Fields Limited**, a company registered in accordance with the laws of South Africa under registration number 1968/004880/06, (viii) **Gold Fields Operations Limited**, a company registered in accordance with the laws of South Africa under registration number 1959/003209/06, (ix) **Newshef 899 Proprietary Limited**, a company registered in accordance with the laws of South Africa under registration number 2007/019941/07, (x) **Beatrix Mines Limited**, a company registered in accordance with the laws of South Africa under registration number 1977/002138/06, (xi) **Farworks/682 Limited**, a company registered in accordance with the laws of South Africa under registration number 1964/004462/06, (xii) **Driefontein Consolidated Proprietary Limited**, a company registered in accordance with the laws of South Africa under registration number 1993/002956/07, (xiii) **GFL Mining Services Limited**, a company registered in accordance with the laws of South Africa under registration number 1997/019961/06, (xiv) **GFI Joint Venture Holdings Proprietary Limited**, a company registered in accordance with the laws of South Africa under registration number 1998/023354/07, (xv) **Harmony Gold Mining Company Limited**, a company registered in accordance with the laws of South Africa under registration number 1950/038232/06, (xvi) **Unisel Gold Mines Limited**, a company registered in accordance with the laws of South Africa under registration number 1972/010604/06, (xvii) **Lorraine Gold Mines Limited**, a company registered in accordance with the laws of South Africa under registration number 1950/039138/06, (xviii) **Randfontein Estates Limited**, a company registered in accordance with the laws of South Africa under registration number 1889/000251/06, (xix) **Sibanye Gold Limited**, a company registered in accordance with the laws of South Africa under registration number 2002/031431/06, (xx) **Leslie Gold Mines Limited**, a company registered in accordance with the laws of South Africa under registration number 1959/001124/06, and (xxi) **Bracken Mines Limited**, a company registered in accordance with the laws of South Africa under registration number 1959/001126/06;

- 1.1.21 **Companies Act** means the Companies Act, 2008;
- 1.1.22 **Contended Deceased Individual** means a deceased person who a Lodging Dependent Claimant, or anyone else, contends to be a Deceased Individual.
- 1.1.23 **Contributions** means the financial contributions referred to in clause 8.1;
- 1.1.24 **Control** means: (i) the legal or beneficial ownership, directly or indirectly, of 50% (fifty percent) or more of the shares or other ownership interests of any Person; (ii) the ability, directly or indirectly, to appoint half or more of the board or other controlling body of any Person; or (iii) the ability, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise to direct or cause the direction of the management and

policies of any Person, and for this purpose, a Person shall be deemed to direct or cause the direction of the management and policies of a Person if the consent or approval of such Person is required with respect to all or substantially all material decisions; and **Controlled, Controls** and **Controlling** shall be construed accordingly;

1.1.25 **CPI** means the change (expressed as a percentage) between (i) the Index numbers for the month from which CPI is being calculated (or, where the Index numbers for that month are not yet released, the latest available Index numbers for the month closest in time prior to that month); and (ii) the Index numbers for the month in which CPI is being determined (or, where the Index numbers for that month are not yet released, the latest available Index numbers for the month closest in time prior to that month); and for the purposes of this clause the Index refers to the headline Consumer Price Index (urban/metropolitan areas, all items) as published in the Statistical Release P0141.1 compiled by Statistics South Africa or, in the absence thereof, a similar index nominated by the Auditors;

1.1.26 **Deceased Individual** means either a Deceased Silicosis Individual or a Deceased Tuberculosis Individual;

1.1.27 **Deceased Silicosis Individual** means a Settling Claimant who:

1.1.27.1 died with Silicosis before the Effective Date;

1.1.27.2 was employed to undertake Risk Work at one or more Qualifying Mines during Qualifying Periods; and

1.1.27.3 is not one of the persons listed in Schedule D;

1.1.28 **Deceased Tuberculosis Individual** means a Settling Claimant who:

1.1.28.1 died before the Effective Date;

1.1.28.2 was employed to undertake Risk Work at one or more Qualifying Mines during Qualifying Periods for a cumulative period of at least 2 (two) years;

1.1.28.3 at the time of his death:

1.1.28.3.1 was employed at a Qualifying Mine during a Qualifying Period to undertake Risk Work;
or

1.1.28.3.2 if his employment was terminated, had undertaken Risk Work at a Qualifying Mine during a Qualifying Period within the immediately preceding twelve calendar month period; and

- 1.1.28.4 is determined by the Medical Certification Panel in a Certificate of Medical Finding as having had Tuberculosis which was the primary cause of his death; and
- 1.1.28.5 is not one of the persons listed in Schedule D;
- 1.1.29 **Dependent**, in relation to a deceased person, means any person who would be entitled to inherit from the deceased person's estate if he were to die without a will or similar testamentary document; and, for the purposes of this clause 1.1.29, any person determined in good faith by the Trustees (or persons authorised by the Trustees for that purpose, including the Trust Certification Committee), acting reasonably, to be a Dependent shall be deemed to be such, even if it transpires after the determination that he would not in fact be entitled to so inherit from the deceased person's estate;
- 1.1.30 **Dependent Claimant** means a Dependent Silicosis Claimant Category A, a Dependent Silicosis Claimant Category B or a Dependent Tuberculosis Claimant;
- 1.1.31 **Dependent Silicosis Claimant Category A** means a Dependent of a Deceased Silicosis Individual, or the executor of the estate of a Deceased Silicosis Individual, where (in each case):
- 1.1.31.1 such Deceased Silicosis Individual died during the period commencing on 12 March 1965 and terminating on the day before the Effective Date;
- 1.1.31.2 the Medical Certification Panel determines in a Certificate of Medical Finding that Silicosis was the primary cause of his death; and
- 1.1.31.3 no Dependents of such Deceased Silicosis Individual nor the executor of his estate has or have delivered a completed and executed Opt Out Notice in terms of the Settlement Agreement;
- 1.1.32 **Dependent Silicosis Claimant Category B** means a Dependent of a Deceased Silicosis Individual, or the executor of the estate of a Deceased Silicosis Individual, if (in each case):
- 1.1.32.1 such Deceased Silicosis Individual does not meet the definitional requirements of clause 1.1.31;
- 1.1.32.2 such Deceased Silicosis Individual died during the period commencing on 1 January 2008 and terminating on the day before the Effective Date;
- 1.1.32.3 such Deceased Silicosis Individual is determined as having had either Silicosis Class 2 or Silicosis Class 3 by:
- 1.1.32.3.1 the Medical Certification Panel in a Certificate of Medical Finding; or

- 1.1.32.3.2 the Trust Certification Committee on the basis of an Approved ODMWA Certificate;
and
- 1.1.32.4 no other Dependents of such Deceased Silicosis Individual or the executor of his estate has or have delivered a completed and executed Opt Out Notice in terms of the Settlement Agreement;
- 1.1.33 **Dependent Tuberculosis Claimant** means a Dependent of a Deceased Tuberculosis Individual, or the executor of the estate of a Deceased Tuberculosis Individual, if (in each case) no other Dependents of such Deceased Tuberculosis Individual nor the executor of his estate has or have delivered a completed and executed Opt Out Notice in terms of the Settlement Agreement;
- 1.1.34 **Differential of Increased Benefit** means the monetary difference between:
- 1.1.34.1 the total gross value of monetary benefits that a potential Eligible Claimant would be entitled to receive for permanent disability (as opposed to loss of earnings) in respect of Silicosis (if his claim relates to a Silicosis Qualifying Disease) or Tuberculosis (if his claim relates to a Tuberculosis Qualifying Disease) in terms of ODMWA and/or in terms of any other applicable legislation that may be promulgated from time to time (including amendments to COIDA) that provides for compensation for permanent disability (and such gross value shall include any amounts already paid to such potential Eligible Claimant for the same disease in terms of ODMWA and/or in terms of any other applicable legislation). This total gross value shall be calculated using the criteria and monetary benefits as they existed at the Submission Date; and
- 1.1.34.2 the monetary benefit that a potential Eligible Claimant would be potentially entitled to receive for permanent disability (as opposed to loss of earnings) in terms of ODMWA (and such monetary benefit shall include any amounts already paid to such potential Eligible Claimant for the same disease in terms of ODMWA) in respect of the same Qualifying Disease to which his claim relates, applying the ODMWA certification criteria as it existed at the Signature Date, and calculated using the monetary benefits as they existed at the Signature Date, and adjusted by CPI (calculated from the Signature Date and determined with reference to the Submission Date),

provided that where the difference is a negative number, it shall be considered to equal zero.

For the purposes of this clause 1.1.34, the **Submission Date** shall be the date on which the potential Eligible Claimant lodged his Lodgement Documents with the Claims Lodgement Officer (provided that all requisite information has been provided to make the determination in clauses 1.1.34.1 and 1.1.34.2) or the date on which such requisite information is received;

- 1.1.35 **Effective Date** means the date on which the Settlement Agreement becomes unconditional;
- 1.1.36 **Eligible Claimant** means:
- 1.1.36.1 a Silicosis Claimant;
- 1.1.36.2 a Tuberculosis Claimant;
- 1.1.36.3 an Historical Tuberculosis Claimant; or
- 1.1.36.4 a Dependent Claimant, where the Dependent Claimant is either:
- 1.1.36.4.1 subject to clause 1.1.36.4.2, the first person determined by the Trustees (or persons authorised by the Trustees for that purpose, including the Trust Certification Committee) to be a Dependent of a Contended Deceased Individual, and such further persons, if any, that are so determined in the 3 (three) calendar months immediately following the first determination; or
- 1.1.36.4.2 the executor of the estate of a Deceased Individual, unless such executor presents himself to the Trustees (or persons authorised by the Trustees for that purpose, including the Trust Certification Committee) after the expiry of the 3 (three) calendar month period contemplated in clause 1.1.36.4.1;
- who has, in each case, lodged a claim for a Benefit with the Trust within the Qualifying Claims Period, in accordance with the provisions of clause 12 of this Trust Deed;
- 1.1.37 **Expert** means a Person appointed in writing by the Trustees, the Agent and the Claimants' Agent to determine any dispute in terms of clause 10 relating to the determinations referred to in clauses 8.4.7.1 and 8.6.4.1 by the Trustees (in consultation with the Financial Consultant). Should the Trustees, the Agent and the Claimants' Agent fail to agree on the identity of that Person for the purposes of clause 10.1 within 5 (five) Business Days after the date of the Referral Notice referred to in clause 10.1, then the Expert shall be nominated, at the request of any of the Trustees, the Agent or the Claimants' Agent, by the president of the Actuarial Society of South Africa (or his nominee) for the time being and from time to time;
- 1.1.38 **Financial Consultant** means the Person appointed in accordance with the provisions of clause 9 from time to time;
- 1.1.39 **First Degree Tuberculosis** means a degree of Tuberculosis certified as "First Degree Tuberculosis" in accordance with the provisions of this Trust Deed, and in particular clause 12.7 read with clause 1.1.11 and clauses 12.8.2.2.1 and 12.8.2.3.1;
- 1.1.40 **Form of Release** shall mean a release substantially in the form of Schedule E hereto;

- 1.1.41 **Founders** means the persons listed in Schedule A;
- 1.1.42 **Historical Tuberculosis Claimant** means a Settling Claimant who:
- 1.1.42.1 is living as at the Effective Date, even if he dies thereafter;
- 1.1.42.2 was issued with a Tuberculosis Certificate during the period commencing on 12 March 1965 and terminating on 28 February 1994, and at the time of such issue:
- 1.1.42.2.1 was employed at one or more Qualifying Mines during Qualifying Periods for a cumulative period of at least 2 (two) years to undertake Risk Work;
- 1.1.42.2.2 if his employment was terminated, within the immediately preceding twelve calendar month period was employed at one or more Qualifying Mines during Qualifying Periods for a cumulative period of at least 2 (two) years to undertake Risk Work;
- 1.1.42.3 is not one of the persons listed in Schedule D;
- 1.1.43 **Initial Benefit Contribution** means the contribution referred to in clause 8.5.1;
- 1.1.44 **Lodgement Documents** means the following documents:
- 1.1.44.1 copy of the identity document, passport or evidence of an employee/industry number of the Lodging Claimant;
- 1.1.44.2 copy of the identity document, passport or evidence of an employee/industry number of the Contended Deceased Individual, where applicable;
- 1.1.44.3 in relation to a Lodging Settling Claimant or a Contended Deceased Individual, the Service Record at any Qualifying Mine;
- 1.1.44.4 fingerprints or equivalent biometric data of the Lodging Claimant;
- 1.1.44.5 bank details, of a bank account in the name of the Lodging Claimant (which account is operational and no closure of such account is in process), unless the Lodging Claimant contends that no such account exists; and
- 1.1.44.6 a duly signed Form of Release;
- 1.1.45 **Lodging Claimant** means a Lodging Settling Claimant or a Lodging Dependent Claimant;
- 1.1.46 **Lodging Dependent Claimant** means a person presenting himself to be a Dependent Claimant;
- 1.1.47 **Lodging Historical Tuberculosis Claimant** means a person presenting himself to be an Historical Tuberculosis Claimant;

- 1.1.48 **Lodging Settling Claimant** means a person presenting himself to be a Settling Claimant;
- 1.1.49 **Master** means the Master, Deputy Master or Assistant Master of the office of the Master of the High Court of South Africa (Gauteng Local Division, Johannesburg);
- 1.1.50 **Medical Advisory Panel** means the medical panel referred to in clause 12.14;
- 1.1.51 **Medical Certification Panel** means the medical panel referred to in clause 12.7;
- 1.1.52 **Medical Report** means:
- 1.1.52.1 the report issued by an Accredited Practitioner in terms of clause 12.6.3;
- 1.1.52.2 in the case of an Historical Tuberculosis Claimant, the report of the results of an acceptable lung function test conducted by any suitably qualified and experienced medical practitioner (unless the Trustees, or persons authorised by the Trustees for that purpose, decide that reports by a particular practitioner are not to be accepted for the purposes of this clause 1.1.52), provided that such lung function test was conducted (i) at least 12 (twelve) calendar months, and at most 18 (eighteen) calendar months, after completion of a course of treatment for Tuberculosis and such completion is evidenced by documented proof from a public health authority; and (ii) such treatment relates to the Tuberculosis which is the subject of the Tuberculosis Certificate referred to in clause 1.1.42.2; and
- 1.1.52.3 in the case of a Contended Deceased Individual who died before the Effective Date, a post-mortem examination report or other diagnosis report conducted by any suitably qualified and experienced medical practitioner (unless the Trustees, or persons authorised by the Trustees for that purpose, decide that reports by a particular practitioner are not to be accepted for the purposes of this clause 1.1.52);
- 1.1.53 **Medical Reviewing Authority** means the medical practitioner appointed by the Trustees in terms of clause 12.15.5.1;
- 1.1.54 **Medically Ineligible** means the Medical Certification Panel has determined that a Lodging Settling Claimant or a Contended Deceased Individual does not have or, in the case of the Contended Deceased Individual, did not have a Qualifying Disease;
- 1.1.55 **Non-qualifying Mine** means any mine other than any of the Qualifying Mines;
- 1.1.56 **Notice of Ineligibility** means the written determination referred to in clause 12.8.2.6 and clause 12.2.3;
- 1.1.57 **ODMWA** means the Occupational Diseases in Mines and Works Act, 1973;

- 1.1.58 **Opt Out Notice** shall have the meaning ascribed to it in the Settlement Agreement;
- 1.1.59 **Parties** means the Founders, the Trustees, the Agent and the Claimants' Attorneys;
- 1.1.60 **Payment Administrator** means the persons appointed by the Trustees in terms of clause 12.9;
- 1.1.61 **Payment Date** means the last day of the calendar month immediately following the calendar month in which the Effective Date falls;
- 1.1.62 **Person** means any natural person, firm, trust, juristic person, governmental authority, joint venture, partnership, association or other entity (whether or not having a separate legal personality);
- 1.1.63 **Qualifying Claims Period** means a period commencing on the Effective Date and terminating on the 12th (twelfth) anniversary of that date;
- 1.1.64 **Qualifying Diseases** means, subject to clause 12.7.11, any of the following (and only the following):
- 1.1.64.1 a Silicosis Qualifying Disease;
 - 1.1.64.2 a Tuberculosis Qualifying Disease;
 - 1.1.64.3 in the case of, or in relation to, a Deceased Tuberculosis Individual and/or an Historical Tuberculosis Claimant, Tuberculosis (but excluding Tuberculosis where there is also the presence of Silicosis); and
 - 1.1.64.4 in the case of, or in relation to, a Dependent Silicosis Claimant Category A, Silicosis (without reference to a particular degree of impairment);
- 1.1.65 **Qualifying Mines** means those gold mines listed in Schedule F;
- 1.1.66 **Qualifying Period** means, in relation to each Qualifying Mine, the period or periods of time indicated for it in Schedule F;
- 1.1.67 **Rand** means South African Rand, the lawful currency of South Africa, and **R** and **ZAR** shall each have the equivalent meaning;
- 1.1.68 **Risk Work** means risk work as contemplated in ODMWA (as at the Signature Date);
- 1.1.69 **Second Degree Tuberculosis** means a degree of Tuberculosis certified as "Second Degree Tuberculosis" in accordance with the provisions of this Trust Deed, and in particular clause 12.7 read with clause 1.1.11 and clauses 12.8.2.2.1 and 12.8.2.3.1;

- 1.1.70 **Settlement Agreement** means the agreement titled "Gold Mineworkers' Class Action Settlement Agreement" entered into, or to be entered into, between, among others, the Founders and the Claimants' Attorneys;
- 1.1.71 **Settling Claimant** has the meaning ascribed to it in the Settlement Agreement, but excludes for the purposes of this Trust Deed (other than the Introduction) a dependent claimant;
- 1.1.72 **Service Record** means a record generated by the Medical Bureau for Occupational Diseases (MBOD) or the Compensation Commission for Occupational Diseases (CCOD), a record generated by TEBA Limited, an official mine employment record, a record generated by a Company's human resources information system, or in exceptional circumstances a similar written record of comparable evidential weight or credibility, which may include a work record, Government Department record, wage slip or pay advice identifying the Settling Claimant and/or Contended Deceased Individual (as applicable), or any other certificate or document originating from a Qualifying Mine which identifies the Settling Claimant as having been an employee of one or more mines and the date(s) of such employment, or such other records as the Trustees (acting reasonably) accept;
- 1.1.73 **Signature Date** means the last date on which this Trust Deed is signed by the Parties;
- 1.1.74 **Silicosis** means permanent lesions, but excluding calcified foci, of the pulmonary organs caused by the inhalation of silica dust in the course of the performance of Risk Work;
- 1.1.75 **Silicosis Claimant** means a Settling Claimant who:
- 1.1.75.1 is living as at the Effective Date, even if he dies thereafter;
- 1.1.75.2 has a Silicosis Qualifying Disease;
- 1.1.75.3 was employed to undertake Risk Work at one or more Qualifying Mines during Qualifying Periods; and
- 1.1.75.4 is not one of the persons listed in Schedule D;
- 1.1.76 **Silicosis Class 1** means a degree of Silicosis certified as "Silicosis Class 1" in accordance with the provisions of this Trust Deed, and in particular clause 12.7 read with clause 1.1.11 and clauses 12.8.2.2.1 and 12.8.2.3.1;
- 1.1.77 **Silicosis Class 2** means a degree of Silicosis certified as "Silicosis Class 2" in accordance with the provisions of this Trust Deed, and in particular clause 12.7 read with clause 1.1.11 and clauses 12.8.2.2.1 and 12.8.2.3.1;

- 1.1.78 **Silicosis Class 3** means a degree of Silicosis certified as "Silicosis Class 3" in accordance with the provisions of this Trust Deed, and in particular clause 12.7 read with clause 1.1.11 and clauses 12.8.2.2.1 and 12.8.2.3.1;
- 1.1.79 **Silicosis Qualifying Disease** means, subject to clause 12.7.11, any of the following degrees of Silicosis (and only the following):
- 1.1.79.1 Silicosis Class 1;
- 1.1.79.2 Silicosis Class 2; and
- 1.1.79.3 Silicosis Class 3;
- 1.1.80 **South Africa** means the Republic of South Africa;
- 1.1.81 **Statutes** means the Trust Property Control Act and any other statute affecting the performance by the Trustees of their duties or functions;
- 1.1.82 **Start-Up Contribution** means the contribution referred to in clause 8.3;
- 1.1.83 **Termination Date** means the date on which the Termination Notice referred to in clause 21.1 is delivered to the Trustees;
- 1.1.84 **Trust** means the Tshiamiso Trust constituted in terms of this Trust Deed;
- 1.1.85 **Trust Administration Contributions** means the contributions referred to in clause 8.4.1;
- 1.1.86 **Trust Bank Account** means the bank account established by the Trust for receipt of amounts payable to and by the Trust in terms of this Trust Deed;
- 1.1.87 **Trust Certification Committee** means the persons appointed by the Trustees in terms of clause 12.8;
- 1.1.88 **Trust Commencement Date** means the date on which the Master issues letters of authority to the Initial Trustees, following lodgment of this Trust Deed with the Master;
- 1.1.89 **Trust Deed** means this deed and any annexes, schedules or attachments to it;
- 1.1.90 **Trust Fund** means all the assets of the Trust from time to time, movable and immovable, corporeal and incorporeal, including (without limitation) contingent interests;
- 1.1.91 **Trust Income** means the income of the Trust (excluding the Contributions) and all realised capital gains, after paying or charging or providing for all costs and expenses (including capital losses) lawfully incurred by the Trustees in connection with such income of the Trust, including any tax that may become payable by the Trust on such income;

- 1.1.92 **Trust Object** means the object referred to in clause 3;
- 1.1.93 **Trust Property Control Act** means the Trust Property Control Act, 1988;
- 1.1.94 **Trustees** means the trustees of the Trust for the time being and from time to time;
- 1.1.95 **Tuberculosis** means an infection of the cardio-respiratory organs caused by *Mycobacterium tuberculosis* and any sequelae, complication or manifestation thereof, but does not include inactive or calcified foci;
- 1.1.96 **Tuberculosis Certificate** means a certificate of finding of the certification committee issued in accordance with ODMWA in the form prescribed in ODMWA and its regulations, which states that the subject has contracted tuberculosis (including certificates which state "TB only", "TB reactivated", "TB can antedate" and "TB current"), but does not state that the subject has first degree tuberculosis or second degree tuberculosis;
- 1.1.97 **Tuberculosis Claimant** means a Settling Claimant who:
- 1.1.97.1 is living as at the Effective Date, even if he dies thereafter;
- 1.1.97.2 has a Tuberculosis Qualifying Disease;
- 1.1.97.3 was employed to undertake Risk Work at one or more Qualifying Mines during Qualifying Periods between 1 March 1994 and the Effective Date, for a cumulative period of at least 2 (two) years;
- 1.1.97.4 at the time of being issued with a Certificate of Medical Finding, an Approved ODMWA Certificate or Tuberculosis Certificate:
- 1.1.97.4.1 was employed at a Qualifying Mine during a Qualifying Period to undertake Risk Work;
or
- 1.1.97.4.2 if his employment was terminated, had undertaken Risk Work at a Qualifying Mine during a Qualifying Period within the immediately preceding twelve calendar month period from the date of issue; and
- 1.1.97.5 is not one of the persons listed in Schedule D; and
- 1.1.98 **Tuberculosis Qualifying Disease** means, subject to clause 12.7.11, any of the following degrees of Tuberculosis (and only the following):
- 1.1.98.1 First Degree Tuberculosis; and
- 1.1.98.2 Second Degree Tuberculosis

but excludes Tuberculosis where there is also the presence of Silicosis.

1.2 **General Interpretation**

For the purposes of this Trust Deed the following rules of construction shall apply, unless the context requires otherwise:

- 1.2.1 a reference to any one gender, whether masculine, feminine or neuter, includes the other 2 (two);
- 1.2.2 any word or expression defined or used in and for the purposes of this Trust Deed shall if expressed in the singular include the plural and vice versa and a cognate word or expression shall have a corresponding meaning;
- 1.2.3 words and expressions defined in the Trust Property Control Act, which are not defined in this Trust Deed, shall have the same meanings in this Trust Deed as those ascribed to them in the Trust Property Control Act;
- 1.2.4 references to a statute or statutory provision include any sub-ordinate legislation made from time to time under that statute or provision and (unless specifically stated otherwise) references to a statute or statutory provision include that statute or provision as from time to time modified or re-enacted and as interpreted and applied from time to time;
- 1.2.5 references in this Trust Deed to **clauses** are to clauses of this Trust Deed;
- 1.2.6 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Trust Deed;
- 1.2.7 references to this Trust Deed or any other deed, document, agreement or instrument shall be construed as a reference to this Trust Deed or that other deed, document, agreement or instrument as amended, varied, novated or substituted from time to time;
- 1.2.8 the words **including, include** or **in particular** followed by specific examples shall be construed by way of example or emphasis only and shall not be construed, nor shall it take effect, as limiting the generality of any preceding words, and the *eiusdem generis* rule is not to be applied in the interpretation of such specific examples or general words;
- 1.2.9 the words **other** or **otherwise** shall not be construed as being an *eiusdem generis* with any preceding words where a wider construction is possible;
- 1.2.10 if a definition confers substantive rights or imposes substantive obligations on a Party, such rights and obligations shall be given effect to and are enforceable as substantive provisions of this Trust Deed, notwithstanding that they are contained in that definition;

- 1.2.11 no rule of construction shall be applied to the disadvantage of a Party to this Trust Deed because that Party was responsible for or participated in the preparation of this Trust Deed or any part of it;
- 1.2.12 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day; and
- 1.2.13 where a day prescribed by this Trust Deed falls on a day that is not a Business Day, it shall be deemed to be the first Business Day following that day.

1.3 **Headings and Sub-headings**

All the headings and sub-headings in this Trust Deed are for convenience only and are not to be taken into account for the purpose of interpreting it.

1.4 **Severance**

If any provision of this Trust Deed that is not material to its efficacy as a whole is rendered void, illegal or unenforceable in any respect under any law of any jurisdiction, the validity, legality and enforceability of the remaining provisions are not in any way affected or impaired thereby and the legality, validity and unenforceability of such provision under the law of any other jurisdiction are not in any way affected or impaired.

PART A: THE TRUST

2. **ESTABLISHMENT OF THE TRUST**

- 2.1 A trust, to be known as the Tshiamiso Trust, is constituted and established on and with effect from the Trust Commencement Date, by means of the donation set out in clause 4 and on the terms and conditions set out in this Trust Deed.
- 2.2 The Trust shall be administered by the Trustees for the benefit of the Eligible Claimants and in the manner and upon the terms and conditions set out in this Trust Deed. The Trustees shall, subject to the provisions of this Trust Deed and in particular the Trust Object, be entitled to establish such rules and regulations as they deem reasonably necessary or desirable for the proper administration of the Trust and to make such determinations and interpretations and to take such ancillary steps as they deem necessary or desirable.

3. **OBJECT**

The object of the Trust is to give effect to the Settlement Agreement and provide Benefits to Eligible Claimants (being the beneficiaries of the Trust) in the amounts and upon the terms set out in this Trust Deed (**Trust Object**). The activities of the Trust shall be directed at, and the Trust Fund shall be used for the pursuit of, the Trust Object.

4. DONATION

The Founders establish the Trust by donating R200 (two hundred Rand) on the Trust Commencement Date to the Trustees in their capacity as such, which donation shall be irrevocable.

PART B: COMPENSATION TO ELIGIBLE CLAIMANTS

5. BENEFITS AND BENEFIT MODIFIERS

5.1 The Trust shall pay the Benefits to which Eligible Claimants are entitled, in accordance with their Qualifying Diseases, as determined in terms of Schedule H, and subject to and in accordance with the provisions of clauses 5 to 7 (both inclusive).

5.2 Subject to clause 5.6 (the **Benefit Modifiers**), Eligible Claimants shall be entitled to the following Benefits:

5.2.1 Silicosis Claimants who have been certified as having:

5.2.1.1 Silicosis Class 1: R70 000 (seventy thousand Rand);

5.2.1.2 Silicosis Class 2: R150 000 (one hundred and fifty thousand Rand);

5.2.1.3 Silicosis Class 3: R250 000 (two hundred and fifty thousand Rand);

5.2.2 Dependent Silicosis Claimant Category A (contemplated in clause 1.1.31): R100 000 (one hundred thousand Rand);

5.2.3 Dependent Silicosis Claimant Category B (contemplated in clause 1.1.32): R70 000 (seventy thousand Rand);

5.2.4 Tuberculosis Claimants who have been certified as having:

5.2.4.1 First degree Tuberculosis: R50 000 (fifty thousand Rand);

5.2.4.2 Second degree Tuberculosis: R100 000 (one hundred thousand Rand);

5.2.5 Historical Tuberculosis Claimants who have been certified as having:

5.2.5.1 Tuberculosis (in the absence of a Medical Report from which the degree of Tuberculosis can be determined): R10 000 (ten thousand rand);

5.2.5.2 First degree Tuberculosis: R50 000 (fifty thousand Rand);

5.2.5.3 Second degree Tuberculosis: R100 000 (one hundred thousand Rand);

- 5.2.6 Dependent Tuberculosis Claimant: R100 000 (one hundred thousand Rand).
- 5.3 An Eligible Claimant may only receive a Benefit for one Qualifying Disease, subject only to the provisions of clause 6 (which deals with the Special Award), and clause 5.4 (which deals with Dependent Claimants).
- 5.4 A Dependent Claimant may only receive a Benefit under one (and not more) of the following categories: Dependent Silicosis Claimant Category A; Dependent Silicosis Claimant Category B; or Dependent Tuberculosis Claimant. When referring to a Dependent Claimant in this clause, the reference is limited to a Dependent Claimant claiming a Benefit in his capacity as a Dependent Claimant. If he is also a Settling Claimant, he may also have a claim in his own right as a Settling Claimant, and that claim shall not be prejudiced by any claim he may make as a Dependent Claimant.
- 5.5 All Benefits are payable in ZAR only and shall not be paid in any other currency.
- 5.6 **Benefit Modifiers**
- 5.6.1 As at the date the Eligible Claimant lodges his Lodgement Documents with the Claims Lodgement Officer, to the extent that:
- 5.6.1.1 a Silicosis Claimant has undertaken Risk Work at a Non-qualifying Mine engaged in gold mining, the Benefit payable to him shall be reduced pro-rata for the time the Silicosis Claimant had undertaken Risk Work at such a Non-qualifying Mine, subject to clause 5.6.1.4;
- 5.6.1.2 a Tuberculosis Claimant or Historical Tuberculosis Claimant has undertaken Risk Work at a Non-qualifying Mine, the Benefit payable to him shall be reduced pro-rata for the time the Tuberculosis Claimant or Historical Tuberculosis Claimant had undertaken Risk Work at a Non-qualifying Mine, subject to clause 5.6.1.4;
- 5.6.1.3 an Eligible Claimant (other than a Dependent Claimant) has undertaken Risk Work at a Qualifying Mine but not during a Qualifying Period, the Benefit payable to him shall be reduced pro-rata for the time the Eligible Claimant had undertaken Risk Work at a Qualifying Mine outside a Qualifying Period, subject to clause 5.6.1.4;
- 5.6.1.4 an Eligible Claimant (other than a Dependent Claimant) has undertaken Risk Work at one or more Qualifying Mines during Qualifying Periods for a cumulative period of 30 (thirty) years, clauses 5.6.1.1, 5.6.1.2 and 5.6.1.3 shall not apply, and the Benefit payable to him shall not be reduced in terms of those clauses; and

- 5.6.1.5 the Differential of Increased Benefit does not equal zero, the Benefit payable to an Eligible Claimant (other than a Dependent Claimant) shall be reduced by the Differential of Increased Benefit.
- 5.6.2 In the case of a Dependent Claimant:
- 5.6.2.1 the provisions of clauses 5.6.1.1 to 5.6.1.5 (both inclusive) shall apply mutatis mutandis, but references to 'Eligible Claimant' shall be construed as a reference to the Deceased Individual, as the context may dictate, and references to 'Silicosis Claimant' in clause 5.6.1.1 shall be construed as a reference to the Deceased Silicosis Individual, and references to 'Tuberculosis Claimant' in clause 5.6.1.2 shall be construed as a reference to the Deceased Tuberculosis Individual; and
- 5.6.2.2 where there is more than one Dependent Claimant who is Certified as an Eligible Claimant in respect of the same Deceased Individual, the Benefit payable to each Dependent Claimant shall be reduced on a pro rata basis such that the total aggregate Benefits payable to all Dependent Claimants in respect of that Deceased Individual do not exceed the Benefit that would be payable if there was only one Dependent Claimant in respect of that Deceased Individual.
- 5.6.3 On a monthly basis the Trust Certification Committee shall provide a list to the Agent of all potential Eligible Claimants, to enable the Agent to ascertain whether or not any Benefit Modifiers are applicable to those potential Eligible Claimants. The Agent shall have 90 (ninety) days to furnish any supporting documentation to motivate for Benefit Modification of the listed potential Eligible Claimants.
- 5.6.4 The period of 90 (ninety) days in clause 5.6.3 is a maximum time period, however the Agent will use its reasonable endeavors to expedite the time it takes to furnish the documents, to the extent possible and practicable in the circumstances.
- 5.6.5 In determining the Benefit Modifiers contemplated in clauses 5.6.1.1, 5.6.1.2 and 5.6.1.3 (which deal with a pro rata reduction for time worked at Non-qualifying Mines or during periods which were not Qualifying Periods):
- 5.6.5.1 the Trust Certification Committee shall only modify a Benefit if there is reasonable proof that the Eligible Claimant worked at a Non-Qualifying Mine or during periods which were not Qualifying Periods, and any unallocated period in the Eligible Claimant's work record shall not be presumed to be a period worked at a Non-Qualifying Mine or a period which was not a Qualifying Period; and
- 5.6.5.2 in the case of a Lodging Claimant who is being Certified on the basis of an Approved ODMWA Certificate or a Tuberculosis Certificate, no Risk Work undertaken after the date

of the Approved ODMWA Certificate or Tuberculosis Certificate shall be taken into account in the calculation of the Benefit Modifier.

- 5.6.6 In determining the Benefit Modifiers the Trust Certification Committee shall consider all supporting documentation provided to it by the Agent (as contemplated in clause 5.6.3) as well as any other information, documentation and data that is in the possession of the Trust, including industry and government databases which it can readily access.
- 5.6.7 In determining and applying the Benefit Modifiers the Trust Certification Committee shall first adjust the Benefit payable in terms of clause 6 (Special Award) and clause 7 (inflationary adjustment) if applicable, then apply the Benefit Modifier contemplated in clause 5.6.1.5 (which deals with the Differential of Increased Benefit) if applicable, and lastly apply the Benefit Modifiers contemplated in clauses 5.6.1.1, 5.6.1.2 and 5.6.1.3 (which deal with a pro rata reduction for time worked at Non-qualifying Mines or during periods which were not Qualifying Periods) if applicable.
- 5.6.8 The Trust Certification Committee shall make its determination of the Benefit Modifiers with respect to potential Eligible Claimants within 30 (thirty) days of receiving the supporting documentation referred to in clause 5.6.3 from the Agent.
- 5.6.9 If a Benefit has not been paid within 3 months after the Trust Certification Committee has made its determination in terms of clause 5.6.8, then the Trust Income accrued on that Benefit from the beginning of the following calendar month until the last day of the calendar month preceding the date such Benefit is paid, shall be paid to the Eligible Claimant in addition to the Benefit.
- 5.6.10 Notwithstanding any other provision in this Trust Deed, where the effect of the reductions contemplated in clauses 5.6.1 and 5.6.2 is that the total Benefit payable is no more than zero, the Eligible Claimant and Dependent Claimant shall not be entitled to a Benefit.
- 5.6.11 If the Trust receives from a Company, pursuant to the resolution of any Preserved Claim (as such term is defined in the Settlement Agreement) in terms of clause 8 of the Settlement Agreement, an amount for payment to a Settling Claimant (as defined in the Settlement Agreement) as an Eligible Claimant, then the Trust shall pay such amount to the Eligible Claimant when it pays a Benefit to the Eligible Claimant, or if the Trust Certification Committee has determined that no Benefit is payable to the Eligible Claimant, forthwith after such determination has been made.

6. SPECIAL AWARD

- 6.1 Notwithstanding anything to the contrary in clause 12.7.11, the Trustees may, in their sole discretion, make a special award (**Special Award**) to any Silicosis Claimant:

- 6.1.1 who is certified as having Silicosis Class 3;
- 6.1.2 who was employed to undertake Risk Work for a cumulative period of at least 10 (ten) years at one or more Qualifying Mines during Qualifying Periods;
- 6.1.3 who is diagnosed by an Accredited Practitioner as having at least one of the following disease processes:
 - 6.1.3.1 progressive massive fibrosis and be aged less than 50 (fifty) years;
 - 6.1.3.2 lung cancer;
 - 6.1.3.3 cor pulmonale; or
 - 6.1.3.4 progressive systemic sclerosis involving the lungs or oesophagus;
- 6.1.4 whose condition has had a severe impact on his ability to do ordinary work; and
- 6.1.5 whose condition has had a severe impact on his ability to support his dependents.
- 6.2 The number of Silicosis Claimants granted Special Awards shall not, over the duration of the Trust, exceed 1% (one percent) of the total number of Silicosis Claimants Certified as having Silicosis Class 3.
- 6.3 Notwithstanding the provisions of clauses 12.7.11 and 12.12.1.1, the Trustees may in their sole discretion provide a Special Award to a Silicosis Claimant who has already obtained a Benefit as contemplated in clause 5.2.1.3 (the **Retroactive Special Award**), provided that the total amount paid to any Silicosis Claimant (adjusted by CPI, calculated from the date of payment thereof), inclusive of the Retroactive Special Award, shall not entitle any Silicosis Claimant to receive Benefits exceeding R500 000 (five hundred thousand Rand).
- 6.4 The decision of the Trustees to provide a Special Award or a Retroactive Special Award must be supported by a minimum of 75% (seventy five percent) of the Trustees and the total payment made to any single Silicosis Claimant may not exceed in total, in respect of all Benefits that may be payable by the Trust, R500 000 (five hundred thousand Rand).

7. **ADJUSTMENT OF BENEFITS WITH INFLATION**

Commencing on the third anniversary of the Payment Date, and on each anniversary of the Payment Date thereafter, the monetary amounts referred to in clauses 5.2 and 6 shall be adjusted by CPI and will be applied for the following Annual Period. This CPI adjustment shall be calculated

from the second anniversary of the Payment Date and be determined with reference to the anniversary of the Payment Date on which the adjustment is being made.

PART C: FUNDING OF TRUST

8. CONTRIBUTIONS

8.1 The Founders shall make the following financial contributions to the Trust:

8.1.1 the Start-Up Contribution;

8.1.2 the Trust Administration Contributions;

8.1.3 the Initial Benefit Contribution; and

8.1.4 the Benefit Contributions,

(collectively, the **Contributions**).

8.2 Any Trust Income that accrues to the Trust from the Contributions referred to in clauses 8.1.1 and 8.1.2 may only be used by the Trustees for the purposes set out in clauses 8.3.2 and 8.4.10. Any Trust Income that accrues to the Trust from the Contributions referred to in clauses 8.1.3 and 8.1.4 may only be used by the Trustees for the payment of Benefits. Any Trust Income that accrues to the Trust from any other source shall be used for any purpose which is in furtherance of the Trust Object. The provisions of this clause 8.2 are subject to those of clause 21.

8.3 The Start-Up Contribution

8.3.1 Within 5 (five) Business Days of the Trust Commencement Date the Founders shall make a contribution of R5 000 000 (five million Rand) into the Trust Bank Account for the purposes referred to in clause 8.3.2 (**Start-Up Contribution**).

8.3.2 The Start-Up Contribution shall be used by the Trustees in the period between the Trust Commencement Date and the Effective Date (**Interim Period**) exclusively for the establishment of the Trust administration, which may include:

8.3.2.1 establishing the information technology system contemplated in clause 8.4.10, and the maintenance of that system;

8.3.2.2 establishing a fraud protection program, as contemplated in clause 12.12; and

8.3.2.3 collecting and processing information relating to the Class Representatives, and other Claimants whose information the Claimants' Attorneys have readily available and provide to the Trustees.

- 8.3.3 During the Interim Period the Trustees may not:
- 8.3.3.1 without the written consent of the Agent (which consent may not be unreasonably withheld or delayed) enter into agreements with third parties for the rendering of services;
or
- 8.3.3.2 make any payments of whatever nature to the Claimants.
- 8.3.4 Insofar as the full amount of the Start-Up Contribution is not used by the Trustees as at the Effective Date, the balance (together with any Trust Income accrued thereon) shall be off-set against the first Trust Administration Contribution payable in terms of clause 8.4.4.

8.4 **The Trust Administration Contributions**

- 8.4.1 Each Founder shall make contributions to the Trust into the Trust Bank Account during the period commencing on the Payment Date and terminating on the Termination Date, for the purposes referred to in clause 8.4.10 (**Trust Administration Contributions**).
- 8.4.2 Notwithstanding anything to the contrary contained elsewhere in this Trust Deed, unless the Agent consents otherwise in writing, the aggregate of all the Trust Administration Contributions and the Start-Up Contribution shall not exceed R845 000 000 (eight hundred and forty five million Rand).
- 8.4.3 Each of the Founders shall pay the Trust Administration Contribution in 4 (four) equal instalments, with one instalment being contributed every 3 (three) months during the relevant Annual Period, the first of which shall be paid on the first day of that Annual Period and the remainder on the last day of the third, sixth and ninth months thereafter of that Annual Period. The Founders shall pay each installment into the Trust Bank Account.
- 8.4.4 The aggregate of all the first Trust Administration Contributions payable by each of the Founders during the first Annual Period shall be equal to an amount of R100 000 000 (One Hundred Million Rand), minus the unused Start-Up Contribution balance as contemplated in clause 8.3.4 (**Aggregated Amount**). This amount shall include the costs and expenses reasonably incurred in the establishment of the Trust. Each Founder's first Trust Administration Contribution shall be an amount equal to the Aggregated Amount multiplied by the percentage of liability relating to that Founder contemplated in clause 27.1.1.
- 8.4.5 With respect to each subsequent Trust Administration Contribution, at least 120 (one hundred and twenty) days prior to the commencement of each Annual Period the Trustees (in consultation with the Financial Consultant) shall develop a financial and operational plan for the upcoming Annual Period (in line with their duties in clause 17.2) and (taking into account the provisions of clauses 8.4.10 and 9) present an indicative budget for the

upcoming Annual Period to the Agent and Claimants' Agent for comment, including:

- 8.4.5.1 an indicative amount for the Trust Administration Contribution of each Founder for the upcoming Annual Period; and
- 8.4.5.2 all financial and operational plans, calculations, documents, policies and assumptions, and other relevant material that inform the indicative amounts in clauses 8.4.5.1.
- 8.4.6 The Trustees shall afford the Founders, the Agent and the Claimants' Agent an opportunity to make such written and, at their discretion, oral representations as any of them wish.
- 8.4.7 Taking into consideration any comments and representations received, at least 90 (ninety) days prior to the commencement of each Annual Period and applying the principles and procedures in Schedule G, the Trustees (in consultation with the Financial Consultant and applying the provisions of clauses 9 insofar as they are applicable) shall finalise the budget for the upcoming Annual Period, and on that basis:
 - 8.4.7.1 determine the amount of the Trust Administration Contribution for each Founder for that Annual Period; and
 - 8.4.7.2 give written notice (**Trust Administration Payment Notice**) to the Agent and the Claimants' Agent setting out:
 - 8.4.7.2.1 all the amounts referred to in clause 8.4.7.1; and
 - 8.4.7.2.2 the basis on which such amounts were determined in terms of clause 9.3.
- 8.4.8 Forthwith after receipt by the Agent of the Trust Administration Payment Notice, the Agent shall furnish a copy of the Trust Administration Payment Notice to each of the Founders.
- 8.4.9 Each of the Founders shall pay to the Trust its Trust Administration Contribution set out in the Trust Administration Payment Notice (as may be amended by the Expert in accordance with the provisions of clause 10) for that Annual Period, in the manner contemplated in clause 8.4.3.
- 8.4.10 Each Trust Administration Contribution may be used by the Trustees for the payment of:
 - 8.4.10.1 costs and expenses reasonably incurred in the establishment of a database and information technology system for the processing of claims and the payment of Benefits, and the maintenance of that system;
 - 8.4.10.2 the ongoing administration costs and expenses reasonably incurred in the administration and governance of the Trust, including all reasonable expenses incurred by the Trustees with respect to their duties as Trustees with which they are entitled to be reimbursed;

- 8.4.10.3 costs and expenses reasonably incurred in the establishment of a fraud protection program, as contemplated in clause 12.12, to prevent the payment of Benefits to persons who are not entitled to receive them;
- 8.4.10.4 the fees payable to the Trustees for acting in their capacity as Trustees, subject to the provisions of clause 14.3.8;
- 8.4.10.5 the fees payable to the Claimants' Agent for the services to be provided by it, and oversight duties to be discharged by it, in terms of this Trust Deed, subject to the provisions of clause 32.10;
- 8.4.10.6 the fees payable to the Financial Consultant for the services to be provided by it in terms of this Trust Deed;
- 8.4.10.7 the reasonable costs of third party service providers, including legal, medical and financial advisors and experts appointed by the Trustees to process and evaluate claims made for Benefits;
- 8.4.10.8 the reasonable costs of providing notice to Claimants, locating and medically examining potential Eligible Claimants; and
- 8.4.10.9 such other matters as the Agent may agree in writing,

provided always that the Trust Administration Contributions may be used only for the pursuit of the Trust Object.

- 8.4.11 Each Founder may at any time make accelerated or advance payments in relation to its Trust Administration Contribution.
- 8.4.12 Insofar as the full amount of any Trust Administration Contribution is not used by the Trustees during the Annual Period in respect of which it will have been paid, the balance (together with any Trust Income accrued thereon) shall be treated as a payment made on account of the Trust Administration Contribution payable in respect of the subsequent Annual Period.

8.5 **The Initial Benefit Contribution**

- 8.5.1 Each Founder shall make an initial contribution to the Trust to enable the Trustees to settle Benefits in the first 2 (two) years of the Trust (**Initial Benefit Contribution**). The aggregate of all the Initial Benefit Contributions shall be equal to an amount of R1 420 000 000 (One Billion Four Hundred and Twenty Million Rand) (**Aggregated Initial Benefit Amount**). Each Founder's Initial Benefit Contribution shall be an amount equal to the Aggregated Initial Benefit Amount multiplied by the percentage of liability relating to that Founder contemplated in clause 27.1.1.

- 8.5.2 Each of the Founders shall pay its Initial Benefit Contribution in 8 (eight) equal instalments every 3 (three) months, the first of which will be paid on the Payment Date and the remainder on the last day of the third, sixth, ninth, twelfth, fifteenth, eighteenth and twenty-first months thereafter. The Founders shall pay each installment into the Trust Bank Account.
- 8.5.3 Each Founder may at any time make accelerated or advance payments in relation to its Initial Benefit Contribution instalments.
- 8.5.4 Insofar as the full amount of the Initial Benefit Contribution is not used by the Trustees by the time the Annual Contribution Period commences, the balance (together with any Trust Income accrued thereon) shall be treated as a payment made on account of the Benefit Contributions payable during the Annual Contribution Period.
- 8.5.5 Insofar as the Initial Benefit Contribution is depleted before the Annual Contribution Period commences, and there are outstanding Benefits due to Eligible Claimants that therefore cannot be paid until the Annual Contribution Period commences, the Trustees may give written notice (**Initial Benefit Contribution Shortfall Notice**) to the Agent requesting an amount of not more than R50 000 000 (fifty million Rand), and setting out the basis on which such an amount was determined.
- 8.5.6 Forthwith after receipt by the Agent of the Initial Benefit Contribution Shortfall Notice, the Agent shall furnish a copy of such notice to each of the Founders.
- 8.5.7 Each of the Founders shall pay to the Trust an amount equal to the amount set out in the Initial Benefit Contribution Shortfall Notice multiplied by the percentage of liability relating to that Founder contemplated in clause 27.1.1.
- 8.5.8 Insofar as the full amount of the monetary amount referred to in clause 8.5.7 is not used by the Trustees by the time the Annual Contribution Period commences, the balance (together with any Trust Income accrued thereon) shall be treated as a payment made on account of the Benefit Contributions payable during the Annual Contribution Period.

8.6 **The Benefit Contributions**

- 8.6.1 Each of the Founders shall make annual contributions to the Trust during the Annual Contribution Period to enable the Trustees to settle Benefits (**Benefit Contributions**).
- 8.6.2 At least 120 (one hundred and twenty) days prior to the commencement of each Annual Period during the Annual Contribution Period the Trustees (in consultation with the Financial Consultant) shall develop a financial plan for each upcoming Annual Period during the Annual Contribution Period (in line with their duties in clause 17.2) and (taking into account the provisions of clause 9) present an indicative budget for the upcoming Annual Period to

the Agent and Claimants' Agent for comment, including:

- 8.6.2.1 an indicative amount for the Benefit Contribution of each Founder for the upcoming Annual Period; and
- 8.6.2.2 all financial and operational plans, calculations, documents, policies and assumptions, and other relevant material that inform the indicative amounts in clauses 8.6.2.1.
- 8.6.3 The Trustees shall afford the Founders, the Agent and the Claimants' Agent an opportunity to make such written and, at their discretion, oral representations as any of them wish.
- 8.6.4 Taking into consideration any comments and representations received, at least 90 (ninety) days prior to the commencement of each Annual Period during the Annual Contribution Period and applying the principles and procedures in Schedule G, the Trustees (in consultation with the Financial Consultant and applying the provisions of clauses 9 insofar as they are applicable) shall finalise the budget for each upcoming Annual Period, and on that basis:
 - 8.6.4.1 determine the amount of the Benefit Contribution for each Founder for that Annual Period; and
 - 8.6.4.2 give written notice (**Benefit Contribution Payment Notice**) to the Agent and the Claimants' Agent setting out:
 - 8.6.4.2.1 all the amounts referred to in clause 8.6.4.1; and
 - 8.6.4.2.2 the basis on which such amounts were determined in terms of clause 9.3.
- 8.6.5 Forthwith after receipt by the Agent of the Benefit Contribution Payment Notice, the Agent shall furnish a copy of such notice to each of the Founders.
- 8.6.6 Each of the Founders shall pay to the Trust its Benefit Contribution set out in the Benefit Contribution Payment Notice (as may be amended by the Expert in accordance with the provisions of clause 10) for that Annual Period.
- 8.6.7 Each of the Founders shall contribute its Benefit Contribution in 4 (four) equal instalments every 3 (three) months during the relevant Annual Period, the first of which shall be paid on the first day of the relevant Annual Period and the remainder on the last day of the third, sixth and ninth months thereafter of the relevant Annual Period. The Founders shall pay each installment into the Trust Bank Account.
- 8.6.8 Each Founder may at any time make accelerated or advance payments in relation to its Benefit Contribution.

- 8.6.9 Insofar as the full amount of any Benefit Contribution is not used by the Trustees during the Annual Period in respect of which it will have been paid, the balance (together with any Trust Income accrued thereon) shall be treated as a payment made on account of the Benefit Contribution payable in respect of the subsequent Annual Period (unless the Agent directs otherwise).
- 8.6.10 Insofar as the Benefit Contribution is depleted before the termination of the Annual Period in respect of which it was paid, and there are outstanding Benefits due to Eligible Claimants that therefore cannot be paid within that Annual Period, the Trustees may in their discretion give written notice (**Benefit Contribution Shortfall Notice**) to the Agent requesting an amount of not more than R50 000 000 (fifty million Rand) in any one Annual Period, and setting out the basis on which such an amount was determined.
- 8.6.11 Forthwith after receipt by the Agent of the Benefit Contribution Shortfall Notice, the Agent shall furnish a copy of such notice to each of the Founders.
- 8.6.12 Each of the Founders shall pay to the Trust an amount equal to the amount set out in the Benefit Contribution Shortfall Notice multiplied by the percentage of liability relating to that Founder for the Annual Period in respect of which the Benefit Contribution was depleted, as contemplated in clause 27.1.2.
- 8.6.13 Insofar as the full amount of the monetary amount referred to in clause 8.6.12 is not used by the Trustees during the Annual Period in respect of which it will have been paid, the balance (together with any Trust Income accrued thereon) shall be treated as a payment made on account of the Benefit Contribution payable in respect of the subsequent Annual Period.

9. THE FINANCIAL CONSULTANT

- 9.1 The Trustees shall procure that throughout the subsistence of the Trust a third party Financial Consultant, which has suitable experience and expertise, is appointed for the Trust for the purposes of clauses 8.4 and 8.6.
- 9.2 The Trustees may from time to time appoint a replacement Financial Consultant with the written approval of the Agent and the Claimants' Agent (which approval may not be unreasonably withheld or delayed, and which approval will be deemed to have been given if it is unreasonably withheld or delayed).
- 9.3 The Financial Consultant, acting under the direction of the Trustees, shall appoint one or more qualified and sufficiently experienced actuaries to assist the Trustees in making any determination referred to in clauses 8.4 and 8.6, and the Trustees (in consultation with the Financial Consultant and the actuaries) shall, in making such determinations, apply the principles and procedures contained in Schedule G hereto, including the following:

- 9.3.1 internationally recognised actuarial and financial principles, taking into account the provisions of this Trust Deed;
 - 9.3.2 the number of claims made by potential Eligible Claimants, commencing from the Payment Date to the date of the determinations referred to in clauses 8.4 and 8.6;
 - 9.3.3 the Benefits due and/or paid to Eligible Claimants, commencing from the Payment Date to the date of the determinations referred to in clauses 8.4 and 8.6;
 - 9.3.4 any unutilised previous Contributions and Trust Income;
 - 9.3.5 any advance Contributions paid by the Founders;
 - 9.3.6 the expected claims for the next Annual Period based on past claims experience and claimant locating projects, planned claimant locating projects, and previous estimates based on available industry data;
 - 9.3.7 the provisions of this Trust Deed; and
 - 9.3.8 any other relevant factor which the Financial Consultant and the Trustees in their discretion (acting reasonably) deem appropriate.
- 9.4 The Financial Consultant, acting under the direction of the Trustees, may call upon any professional advisors of the Trust, including the Auditors or any of their predecessors, for such documents and information as the Financial Consultant may reasonably require for the purposes of the determinations referred to in clauses 8.4 and 8.6.
- 9.5 For the avoidance of doubt, the Trustees are responsible for the obligations of the Trust and those obligations cannot be abrogated to the Financial Consultant.

10. **DISPUTES**

- 10.1 The Agent, the Claimants' Agent and/or each Founder (**Disputing Party**) may dispute any determination of the Trustees (in consultation with the Financial Consultant) referred to in clauses 8.4 and 8.6 in respect of an Annual Period, on the grounds that the Trust Administration Contribution and/or the Benefit Contribution and/or any portion of either of them is excessive, unattainable, not commercially reasonable, not done in good faith, or is not in accordance with the provisions of this Trust Deed (including those of Schedule G). The Disputing Party shall notify the Trustees and the Agent (if it is not the Disputing Party) and the Claimants' Agent (if it is not the Disputing Party) thereof in writing (**Referral Notice**), setting out the grounds on which it disputes the determination, within 10 (ten) Business Days after receipt of such determination from the Trustees, after which the matter will be referred to the Expert to make such a determination.

- 10.2 If the Disputing Party has not delivered a Referral Notice as contemplated in clause 10.1, the Parties will be deemed to have accepted the Trustees' determination referred to in clauses 8.4 and 8.6 and such determination shall be final and binding upon the Parties.
- 10.3 If the Disputing Party has delivered a Referral Notice as contemplated in clause 10.1, the Expert shall act on the following basis:
- 10.3.1 the Expert is to make a decision on the dispute and notify the Parties and the Claimants' Agent of its decision within 15 (fifteen) Business Days of receiving the Referral Notice or such longer reasonable period as the Expert may determine, but not exceeding 30 (thirty) Business Days;
- 10.3.2 the Expert shall fully set out the reasons for his decision in writing;
- 10.3.3 the Expert shall act as an expert and not as an arbitrator and its decision shall (save for any manifest error or fraud) be final and binding on the Parties;
- 10.3.4 the Expert shall permit the Parties to make representations with regard to the determination and the dispute;
- 10.3.5 the Parties and the Claimants' Agent shall each provide the Expert with all information relating to the matter which the Expert reasonably requires and the Expert shall be entitled (to the extent it considers appropriate) to base its determination on such information;
- 10.3.6 the Expert shall determine the matters in dispute having regard to the foregoing provisions of this clause 10 (and Schedule G);
- 10.3.7 except to the extent that the Agent, the Claimants' Agent and the Trustees agree otherwise, the Expert shall determine its own procedures; and
- 10.3.8 the Expert may determine the responsibility for meeting its costs and, in the absence of doing so, the costs of the Expert shall be borne and paid by the Founders.

PART D: LOCATING CLAIMANTS, CLAIMS PROCESS AND REVIEW MECHANISM

11. LOCATING SETTLING CLAIMANTS (INCLUDING DEPENDENT CLAIMANTS)

- 11.1 It is the intention of the Founders, the Trustees and the Claimants' Attorneys for all Eligible Claimants to be evaluated and paid Benefits due to them in terms of this Trust Deed. Therefore, the Trustees shall use their reasonable endeavours during the period commencing on the Effective Date and terminating on the 10th (tenth) anniversary of the Effective Date (but not beyond that period unless the Agent agrees):

- 11.1.1 to locate as many of the Settling Claimants (including Dependent Claimants) as is possible in order to ensure that, if it appears they may qualify for Certification, they are assisted in lodging a claim in terms of this Trust Deed and are medically examined;
- 11.1.2 to obtain a list of the following information (or as much of it as is possible) in respect of each of the Settling Claimants (including Dependent Claimants) identified by the Claimants' Attorneys during the Class Action Litigation:
 - 11.1.2.1 names;
 - 11.1.2.2 identity numbers;
 - 11.1.2.3 employment numbers; and
 - 11.1.2.4 labour history/ Service Record;
- 11.1.3 within 3 (three) calendar months of receipt of the list referred to in clause 11.1.2, to complete a search of the employment records of the Founders (which shall co-operate with the Trustees) to identify as many persons as reasonably possible who had undertaken Risk Work on Qualifying Mines during Qualifying Periods in order to ensure that, if it appears they may qualify for Certification, they are assisted in lodging a claim in terms of this Trust Deed. The period of 3 (three) calendar months in this clause is a maximum time period, however the Trustees will use their reasonable endeavors to expedite the time it takes to complete the search of the records, to the extent possible and practicable in the circumstances;
- 11.1.4 to create a database and information technology system containing any and all the information received from the Claimant's Attorneys and the Agent referred to in clause 11.1.2 and 11.1.3; and
- 11.1.5 to appoint suitably qualified third party service providers to assist with locating the Settling Claimants (including Dependent Claimants).
- 11.2 The Trustees (or persons authorised by them for that purpose) may, during the process set out in clause 11.1, collect and process personally identifiable information from the Settling Claimants (including Dependent Claimants), which may include biometric data.
- 11.3 The Trustees shall ensure, to the extent that is practical in the circumstances, to co-ordinate the Trust's efforts to locate Settling Claimants (including Dependent Claimants) with existing systems, processes, personnel and infrastructure that may be established for a similar purpose under ODMWA or COIDA, so as to avoid unnecessary duplication wherever practical.

12. CLAIMS PROCESS

12.1 The Trustees shall use their reasonable endeavours to give effect to the Trust Object and procure that appropriate processes, systems, facilities and procedures are established and appropriate personnel are employed (or third party service providers are appointed) to accomplish the Trust Object, including giving effect to the provisions of clause 11 and the ensuing provisions of this clause 12.

12.2 Overview of claims process

12.2.1 Lodging Claimants must lodge claims with a Claims Lodgement Officer.

12.2.2 If the Claims Lodgement Officer is satisfied that the required Lodgement Documents have been furnished by the Lodging Claimant, it shall:

12.2.2.1 subject to clause 12.2.4, refer the Lodging Claimant (unless he falls within the provisions of clauses 12.2.2.2, 12.2.2.3, 12.2.2.4, 12.2.2.5, and 12.2.2.6.1) to an Accredited Practitioner for a medical examination;

12.2.2.2 if a Lodging Claimant (other than a Lodging Historical Tuberculosis Claimant) already has a Medical Report, submit the Medical Report together with the Lodgement Documents to the Medical Certification Panel;

12.2.2.3 if a Lodging Historical Tuberculosis Claimant has a Medical Report submit the Medical Report, together with the Lodgement Documents and a Tuberculosis Certificate, to the Medical Certification Panel;

12.2.2.4 if a Lodging Historical Tuberculosis Claimant has a Tuberculosis Certificate, but does not have a Medical Report, submit the Tuberculosis Certificate together with the Lodgement Documents to the Trust Certification Committee;

12.2.2.5 if a Lodging Claimant has an Approved ODMWA Certificate that was issued after the Effective Date, submit the Approved ODMWA Certificate together with the Lodgement Documents to the Trust Certification Committee; or

12.2.2.6 if a Lodging Claimant has an Approved ODMWA Certificate that was issued before the Effective Date, give the Lodging Claimant the election, and comply with his instruction, either to:

12.2.2.6.1 submit the Approved ODMWA Certificate together with the Lodgement Documents to the Trust Certification Committee; or

12.2.2.6.2 subject to clause 12.2.4, be referred to an Accredited Practitioner for a medical examination. In conjunction with the medical examination, the Accredited

Practitioner may review the Approved ODMWA Certificate before issuing a Medical Report. The Approved ODMWA Certificate will be disregarded for all further processes set out in this clause 12.2 and will be superseded by the Medical Report that will be issued. In relation to a Tuberculosis Claimant, the medical examination for the purposes of this clause 12.2.2.6.2 shall be limited to a lung function test.

- 12.2.3 If it is clear from the face of the Lodgement Documents that a Lodging Claimant would not under any circumstances be (or become able to be) Certified as an Eligible Claimant, the Claims Lodgement Officer will create an internal record of ineligibility, and shall not process the claim further. The Claims Lodgement Officer shall issue a Notice of Ineligibility to the Lodging Claimant stating the reasons why in its assessment the Lodging Claimant would not be able to be (or become able to be) Certified.
- 12.2.4 If the Claims Lodgement Officer is satisfied that the Lodging Settling Claimant or Contended Deceased Individual has, or had, undertaken Risk Work at a Qualifying Mine for a period of 5 (five) years, then the costs associated with the medical examination shall be borne by the Trust. If the Lodging Claimant does not satisfy the Claims Lodgement Officer that the Lodging Settling Claimant or Contended Deceased Individual has, or had, undertaken Risk Work at a Qualifying Mine for a period of 5 (five) years, then the costs associated with the medical examination shall be borne by the Lodging Claimant and not by the Trust. If the Lodging Claimant is subsequently Certified as an Eligible Claimant on the basis of a medical examination of which he bore the costs, the Payment Administrator shall reimburse the Eligible Claimant with the reasonable costs incurred by the Eligible Claimant for his medical examination when he is paid his Benefit (or when he would have been paid his Benefit but for the Benefit Modifiers).
- 12.2.5 In the case of clause 12.2.2.1 and clause 12.2.2.6.2, the Accredited Practitioner shall medically examine a Lodging Settling Claimant and issue a Medical Report.
- 12.2.6 The Accredited Practitioner may provide medical advice to the Lodging Settling Claimant consistent with his ethical obligations, however this shall be for the account of the Lodging Settling Claimant.
- 12.2.7 The Accredited Practitioner may, in appropriate cases, refer a Lodging Settling Claimant for medical treatment, instruct the Lodging Settling Claimant to return for further medical examinations by the Accredited Practitioner upon completion of the medical treatment program, and only thereupon issue a Medical Report. Any medical treatment provided shall be for the account of the Lodging Settling Claimant.

- 12.2.8 In the case of clause 12.2.2.1 and clause 12.2.2.6.2, the Accredited Practitioner (with the assistance of the Claims Lodgement Officer) shall submit the Medical Report together with the Lodgement Documents to the Medical Certification Panel.
- 12.2.9 The Medical Certification Panel shall review the Medical Report and issue a Certificate of Medical Finding.
- 12.2.10 Unless the Certificate of Medical Finding concludes that a Lodging Settling Claimant or Contended Deceased Individual is Medically Ineligible, the Medical Certification Panel (or appointed administrative personnel) shall submit the Certificate of Medical Finding together with the Lodgement Documents to the Trust Certification Committee.
- 12.2.11 The Trust Certification Committee shall Certify the Lodging Claimant.
- 12.2.12 Unless the Certification concludes that the Lodging Claimant is not entitled to Benefits, the Trust Certification Committee shall submit the Certification to the Payment Administrator to facilitate payment of the Benefit.
- 12.3 For the purposes of the claims process set out in clause 12.2, the Trustees shall ensure, to the extent that is practical in the circumstances, to co-ordinate with, and utilise, the existing systems, processes, personnel and infrastructure that may be established for similar purposes and functions under ODMWA or COIDA, so as to avoid unnecessary duplication wherever practical.
- 12.4 The Claims Lodgement Officer, Trust Certification Committee, and Payment Administrator merely represent distinct functions and duties of the Trust, and do not necessarily represent separate personnel. More than one of these functions and duties may be performed by the same employees and personnel, as the Trustees shall direct.
- 12.5 **Claims Lodgement Officer**
- 12.5.1 The Trustees shall appoint adequate and duly qualified personnel who will, under the direction and oversight of the Trustees, administer the processing of claims as set out in this clause 12.5.
- 12.5.2 The Claims Lodgement Officers shall accept claims lodged by Lodging Claimants, and assist them with the claims process.
- 12.5.3 In order to process a claim, the Claims Lodgement Officer must satisfy itself that a Lodging Claimant has substantially furnished the Lodgement Documents.
- 12.5.4 If the Claims Lodgement Officer is not satisfied that a Lodging Claimant has substantially furnished the Lodgement Documents or other documents necessary to substantiate his claim, he shall inform the Lodging Claimant which documents are outstanding and, where

appropriate at his discretion, assist the Lodging Claimant with obtaining such documentation.

12.5.5 Form of Release

The Claims Lodgement Officer shall procure that a Lodging Claimant signs a Form of Release, confirming that he:

- 12.5.5.1 acknowledges that he is bound by the settlement contemplated in the Settlement Agreement and further confirming, for good measure, that he shall have no claim against the Trust, its employees and third party contractors, or the Trustees, save as expressly set out in this Trust Deed;
- 12.5.5.2 shall have no claim or recourse of whatsoever nature against any of the Companies, Agent, Claimants' Attorneys, Claimants' Agent or Class Representatives arising from the terms of this Trust Deed or any failure by the Trustees to comply with the terms of this Trust Deed or to conduct the affairs of the Trust in the manner required of them;
- 12.5.5.3 understands and agrees that the Trust and its nominees may be required to collect and process personally identifiable information, including special personal information (as defined in the Protection of Personal Information Act, 2013), about him, for the purpose of, inter alia, processing claims in terms of this Trust Deed, and that personal information may, from time to time, be shared with certain persons in terms of this Trust Deed (including between the Parties and their Affiliates), and such information may in appropriate circumstances reside outside of South Africa, and he agrees that the Trustees and their nominees shall be entitled to transfer his personal information to such locations outside of South Africa, and use his personal information in such locations as described above;
- 12.5.5.4 understands and agrees that the Trustees and their nominees may be required to use, disclose to and collect from industry databases, credit bureaus and other databases, including the databases of the Medical Bureau for Occupational Diseases (MBOD), the Compensation Commission for Occupational Diseases (CCOD), previous employers and/or pension or provident funds, personally identifiable information about him (including, without limitation, medical information and other special personal information, as defined in the Protection of Personal Information Act, 2013), and disclose that information to the Parties, and he authorises any person whom the Trustees or their nominees contact in this regard to provide such information to them; and
- 12.5.5.5 understands and agrees that the Trustees and their nominees may be required to compile and disclose to any party to the Class Action Litigation his personal contact

details which may be required pursuant to an order of court or for discovery in such proceedings.

12.5.6 The Claims Lodgement Officer may collect and process personally identifiable information from the Lodging Claimant, which may include biometric data.

12.5.7 When the Claims Lodgement Officer has collected the Lodgement Documents it shall progress the claim, and/or issue a Notice of Ineligibility, and/or further assist the Lodging Claimant, as set out in clause 12.2.2.

12.6 **Accredited Practitioners**

12.6.1 Registry of Accredited Practitioners

12.6.1.1 The Trustees shall compile (and update from time to time) a registry of approved medical facilities, bodies and practitioners. Such practitioners (and practitioners employed by, or members of, such facilities and bodies) shall be authorised to perform medical testing (including post-mortem examinations, and the removal of internal organs for pathological examination at other approved facilities, where applicable) and issue Medical Reports to Lodging Settling Claimants and, with respect to Contended Deceased Individuals, to Lodging Dependent Claimants.

12.6.1.2 The medical facilities, bodies and practitioners in clause 12.6.1.1 may be approved for certain medical examinations and/or procedures but not others, and where this is the case, this shall be noted in the registry.

12.6.2 Medical Examination Facilities

12.6.2.1 In consultation with the Medical Advisory Panel, where applicable, and any relevant third party service provider, the Trustees shall establish and maintain medical examination facilities, including the appointment of suitably qualified administrative and medical personnel with experience in the examination of occupational lung diseases, to perform reliable medical examinations (including post-mortem examinations where applicable) and issue Medical Reports to Lodging Settling Claimants and, with respect to Contended Deceased Individuals, to Lodging Dependent Claimants.

12.6.2.2 The facilities referred to in clause 12.6.2.1 shall be entered into the registry of Accredited Practitioners referred to in clause 12.6.1.

12.6.3 Medical Report

12.6.3.1 The Accredited Practitioner shall medically examine Lodging Settling Claimants, and conduct post-mortem examinations (and ancillary procedures) on Contended

Deceased Individuals and Lodging Settling Claimants who have died, having regard to the medical examinations and standards determined by the Trustees and as contemplated in Schedule H.

12.6.3.2 The Accredited Practitioner shall prepare and issue to the Lodging Claimant and to the Claims Lodgement Officer (where applicable) a full medical report (complying with the standards determined by the Trustees and as contemplated in Schedule H hereto) on the results of the examinations undertaken by him, including (where applicable):

12.6.3.2.1 the x-rays and other diagnostic images; and

12.6.3.2.2 the results of lung function tests.

12.7 **Medical Certification Panel**

12.7.1 In consultation with the Medical Advisory Panel (where applicable), the Trustees shall appoint a panel of at least 2 (two) and at most 3 (three) qualified medical practitioners (**Panellists**) who have experience in the evaluation of respiratory impairment and occupational lung diseases.

12.7.2 The Trustees may appoint more than one such panel, and each panel shall be a Medical Certification Panel, with the powers and duties set out below.

12.7.3 The Medical Certification Panel shall:

12.7.3.1 subject to clause 12.7.6, consider Medical Reports submitted to it;

12.7.3.2 apply the principles for determining diagnoses contained in Schedule H hereto; and

12.7.3.3 on the basis of clauses 12.7.3.1, 12.7.3.2 and 12.7.5, issue Certificates of Medical Finding.

12.7.4 During the course of carrying out its duties in clause 12.7.3, the Medical Certification Panel may note the details of Lodging Claimants who exhibit symptoms that would make such Lodging Claimants potentially eligible for the Special Award in terms of clause 6, and bring such cases to the attention of the Trustees in due course.

12.7.5 For the purposes of the determination in the Certificate of Medical Finding, the determination shall require, and be on the basis of, the concurring diagnosis of at least 2 (two) Panellists.

12.7.6 If the Medical Certification Panel finds that a purported Medical Report submitted to it is incomplete or otherwise substantially falls short of the standards set out for Medical Reports in Schedule H hereto, the Medical Certification Panel shall communicate this finding to the Claims Lodgement Officer who is handling the claim of the Lodging Claimant to which the

purported Medical Report pertains. Where necessary, the Claims Lodgement Officer shall communicate with the Lodging Claimant that he should undergo a new medical examination (where applicable) by another Accredited Practitioner and be issued with a new Medical Report that will replace the purported Medical Report, and he shall then follow the claims process in this Trust Deed from the stage of being issued a Medical Report.

- 12.7.7 With respect to a Medical Report pertaining to a Contended Deceased Individual or a Lodging Historical Tuberculosis Claimant, where the Medical Report was not prepared by an Accredited Practitioner, the Medical Certification Panel may consider it or disqualify it on reasonable grounds, and elect not to rely on it in making its determination in the Certificate of Medical Finding.
- 12.7.8 If the determination of the Certificate of Medical Finding is that the Lodging Settling Claimant or Contended Deceased Individual is Medically Ineligible, the Medical Certification Panel (or administrative personnel that the Trustees shall appoint for that purpose) shall issue the Certificate of Medical Finding to the Claims Lodgement Officer which shall communicate the determination to the Lodging Claimant.
- 12.7.9 If the determination of the Certificates of Medical Finding is that the Lodging Settling Claimant or Contended Deceased Individual has or had a Qualifying Disease, the Medical Certification Panel (or administrative personnel that the Trustees shall appoint for that purpose) shall issue the Certificate of Medical Finding to the Trust Certification Committee.
- 12.7.10 Where a Lodging Settling Claimant or Contended Deceased Individual has or had Tuberculosis in the presence of Silicosis, the Medical Certification Panel shall make its determination on the same basis as it makes its determination with regard to a Lodging Settling Claimant or Contended Deceased Individual who only has Silicosis. The presence of Tuberculosis shall not affect the determination.
- 12.7.11 Non-progression
- 12.7.11.1 If a Certificate of Medical Finding reflects that a Lodging Settling Claimant or Contended Deceased Individual has or had a Qualifying Disease, the Lodging Settling Claimant or the Lodging Dependent Claimant (in respect of the Contended Deceased Individual) shall:
- 12.7.11.1.1 subject to clause 12.15.5, not be entitled to any additional Certificate of Medical Finding in relation to his disease; and
- 12.7.11.1.2 be regarded as having, or having had, the particular Qualifying Disease so certified, even if his condition deteriorates or improves thereafter or he would have been certified as having a different Qualifying Disease had his examination been

completed at a later stage or another Medical Report been submitted to the Medical Certification Panel.

12.7.11.2 If a Certificate of Medical Finding reflects that a Contended Deceased Individual was Medically Ineligible, the Contended Deceased Individual will be regarded as not having had a Qualifying Disease even if a different Medical Report will be, or could have been, submitted to the Medical Certification Panel indicating a different diagnosis.

12.7.11.3 Should the Medical Report or Certificate of Medical Finding reflect that a Lodging Settling Claimant is Medically Ineligible, he may lodge 1 (one) (and only one) further claim and be entitled to an additional Certificate of Medical Finding on the basis of a further Medical Report. The costs associated with such further Medical Report shall be borne by the Lodging Settling Claimant. If the Lodging Settling Claimant is subsequently Certified as an Eligible Claimant on the basis of a medical examination of which he bore the costs, the Payment Administrator shall reimburse the Eligible Claimant with the reasonable costs incurred by the Eligible Claimant for his medical examination when he is paid his Benefit (or when he would have been paid his Benefit but for the Benefit Modifiers). The Certificate of Medical Finding shall clearly inform the Lodging Settling Claimant of these rights under the Trust.

12.8 **Trust Certification Committee**

12.8.1 The Trustees shall appoint adequate and duly qualified personnel who will, under the direction and oversight of the Trustees, Certify the Settling Claimants and Dependent Claimants as set out in this clause 12.8.

12.8.2 The Trust Certification Committee shall, for the duration of the Qualifying Claims Period:

12.8.2.1 Process claims submitted to it from the Claims Lodgement Officer and/or Medical Certification Panel, consisting of applications from:

12.8.2.1.1 Lodging Settling Claimants; and

12.8.2.1.2 Lodging Dependent Claimants in respect of Contended Deceased Individuals.

12.8.2.2 With regard to the persons in clause 12.8.2.1.2:

12.8.2.2.1 when furnished with an Approved ODMWA Certificate, and not furnished with a Certificate of Medical Finding, determine the Qualifying Disease, if any, which corresponds to the degree of compensatable disease in terms of ODMWA (as at the date the Approved ODMWA Certificate was issued) in accordance with Schedule H, as applicable;

- 12.8.2.2.2 determine whether or not the Contended Deceased Individual complies with the definitional elements of a Deceased Individual;
- 12.8.2.2.3 determine whether or not the Lodging Dependent Claimant complies with the definitional elements of a Dependent Claimant; and
- 12.8.2.2.4 maintain an appropriate database of the details of the Dependent Claimant for each Deceased Individual, in order to ensure that no further persons will qualify as the Dependent Claimant for the same Deceased Individual.
- 12.8.2.3 With regard to Lodging Claimants:
 - 12.8.2.3.1 when furnished with an Approved ODMWA Certificate, and not furnished with a Certificate of Medical Finding, determine the Qualifying Disease, if any, which corresponds to the degree of compensatable disease in terms of ODMWA (as at the date the Approved ODMWA Certificate was issued) in accordance with Schedule H, as applicable; and
 - 12.8.2.3.2 issue a Certification to each Lodging Claimant after:
 - 12.8.2.3.2.1 determining compliance (or non-compliance) with the definitional elements of each type of Eligible Claimant; and
 - 12.8.2.3.2.2 determining the Benefits, if any, that the Eligible Claimant is entitled to claim from the Trust;
 - 12.8.2.3.2.3 in relation to a Lodging Dependent Claimant, determining that no Benefits have already been paid to any person for the same Deceased Individual; and
 - 12.8.2.3.2.4 in relation to Lodging Claimants, determining that no Benefits have already been paid to the Lodging Claimant (claiming in his own right as a Settling Claimant, as opposed to in his capacity as a Dependent Claimant where he is both a Settling Claimant and a Dependent Claimant).
- 12.8.2.4 When furnished with documentation which would support a Certification of the Lodging Settling Claimant or Lodging Dependent Claimant (claiming in his capacity as a Dependent Claimant as opposed to in his own right as a Settling Claimant) as more than one category of Eligible Claimant, the Trust Certification Committee shall Certify the Lodging Claimant as the category of Eligible Claimant which would entitle him to the greatest amount of Benefit. No Lodging Settling Claimant or Lodging Dependent Claimant (claiming in his capacity as a Dependent Claimant as opposed to in his own right as a Settling Claimant) may be Certified as more than one category of Eligible Claimant.

- 12.8.2.5 Submit the Certification to the Payment Administrator if an Eligible Claimant is Certified as being entitled to receive a Benefit.
- 12.8.2.6 Issue a Notice of Ineligibility to a Lodging Claimant if it determines that the Lodging Claimant does not comply with the definitional elements of an Eligible Claimant, stating the reasons why the Lodging Claimant has been determined not to be an Eligible Claimant.
- 12.8.2.7 On the instruction of the Trustees (or persons appointed by them for this purpose) issue a Certification that an Eligible Claimant is entitled to a Special Award, as set out in clause 6, and the amount of the Benefit he is entitled to, and submit the Certification to the Payment Administrator.
- 12.8.3 Notwithstanding clause 1.1.12, no determination by the Trust Certification Committee shall be considered to be a Certification for the purposes of this Trust Deed unless and until the Lodging Claimant has duly signed the Form of Release.
- 12.8.4 For the subsistence of the Trust the Trust Certification Committee shall collect all the signed Forms of Release from the Claims Lodgement Officers, and store the Forms of Release in an appropriately secure and accessible place and form.

12.9 **Payment Administrator**

The Trustees shall appoint adequate and duly qualified personnel who will, under the direction and oversight of the Trustees:

- 12.9.1 ensure that each Eligible Claimant has been identified with reasonable certainty, based on (but without limitation to) his: name, identity number or passport number and copy of ID book or passport and employment number (if available);
- 12.9.2 in the case of an Eligible Claimant who was Certified on the basis of a medical examination of which he bore the costs, determine the reasonable costs incurred by the Eligible Claimant for his medical examination, and reimburse the Eligible Claimant with such costs, in terms of clause 12.2.4;
- 12.9.3 process payments of Benefits to the bank accounts held in the name of the Eligible Claimants who have been Certified (which accounts must be operational and no closure of such accounts should be in process), in accordance with the amounts of the Benefit set out in the Certification; and
- 12.9.4 maintain detailed accounts of payments of Benefits.

12.10 **Adequate resources, systems and staff**

- 12.10.1 The Trustees shall establish and maintain the necessary systems and processes, including information technology systems, to enable the Claims Lodgement Officers, Trust Certification Committee and Payment Administrator to discharge their duties in terms of this Trust Deed.
- 12.10.2 The Trustees may appoint appropriate third party service providers to advise them on, assist them with, and/or undertake, among other things, the establishment and operation of systems and procedures (including information technology systems and protocols) for processing claims, Certification, payment of Benefits to Eligible Claimants and fraud prevention.
- 12.10.3 The Trustees may increase or decrease the number of persons which constitute the Claims Lodgement Officers, Trust Certification Committee and Payment Administrator, and/or replace them from time to time, having regard to their capacity requirements.
- 12.10.4 The same employees of the Trust and appointed personnel described in clauses 11, 12.5, 12.8, and 12.9 may perform the functions and duties under each of these clauses, as the Trustees shall direct.

12.11 **Financial Literacy Programme**

The Trustees shall, where reasonable and practicable, establish a financial literacy programme which shall ensure that Claimants who receive benefits from the trust are provided with financial literacy information, including, where practicable, financial literacy information workshops.

12.12 **Fraud Protection Program**

- 12.12.1 The Trustees shall, within 3 (three) calendar months of the Effective Date, establish a fraud protection program that will be designed to prevent abuse of the Benefits provided by the Trust, including ensuring that:
- 12.12.1.1 only Eligible Claimants are paid Benefits;
- 12.12.1.2 no Eligible Claimant is able to claim compensation more than once (unless he is claiming as both a Settling Claimant and a Dependent Claimant, as provided for in clause 5.4);
- 12.12.1.3 no compensation may be claimed more than once for the same Deceased Individual;
- 12.12.1.4 no Lodging Settling Claimant will be able to rely on the medical records of another person;

12.12.1.5 no Lodging Dependent Claimant (claiming in his capacity as a Dependent Claimant as opposed to in his own right as a Settling Claimant) will be able to rely on the medical records of a person other than the Lodging Deceased Individual; and

12.12.1.6 instances of fraud and attempted fraud are averted and prevented.

12.13 **Records**

12.13.1 The Parties acknowledge that the records falling within the definition of Service Records may be incomplete or even contradictory, thereby making it difficult to determine whether or not a Lodging Settling Claimant is a Settling Claimant (which includes a Dependent Claimant), a Settling Claimant is an Eligible Claimant, or any Benefit Modifiers apply to any Benefit payable to any Eligible Claimant.

12.13.2 The Trustees (or persons appointed by them for this purpose) shall have the discretion (acting reasonably) to determine whether or not any of those records suffice and, if they do, which of them carry more weight than others, always taking into account the Trust Object, their fiduciary duties, the interests of the Settling Claimants (including Dependent Claimants) and the interests of the Founders.

12.13.3 The Trustees (or persons appointed by them for this purpose) shall accord greater weight to original records than records captured on reconstructed databases, other than instances where original records pose the risk of fraud.

12.14 **Medical Advisory Panel**

The Trustees may appoint a medical panel, consisting of at least 2 (two) qualified medical practitioners with expertise and experience in the evaluation of respiratory impairment and occupational lung diseases, to advise them on any medically related matters.

12.15 **Reviewing Authority**

12.15.1 The Trustees shall establish and maintain a dispute resolution function, consisting of:

12.15.1.1 the Medical Reviewing Authority;

12.15.1.2 the Certification Reviewing Authority; and

12.15.1.3 adequate and duly qualified personnel who will undertake administrative and processing functions relating to the dispute resolution process,

(Collectively, the **Reviewing Authority**),

in accordance with the ensuing provisions of this clause 12.15.

- 12.15.2 Should a Lodging Claimant dispute (**Disputing Claimant**):
- 12.15.2.1 the Certificate of Medical Finding issued to him;
- 12.15.2.2 the Certification issued to him;
- 12.15.2.3 the Notice of Ineligibility issued to him by the Trust Certification Committee; or
- 12.15.2.4 the Notice of Ineligibility issued to him by the Claims Lodgement Officer;

(**Disputed Determination**), within 30 (thirty) days of being issued with the Disputed Determination he may refer the dispute to the Reviewing Authority for dispute resolution in terms of this clause 12.15.

- 12.15.3 If the Disputed Determination falls within clause 12.15.2.1 the Reviewing Authority shall allocate all disputes relating to it to the Medical Reviewing Authority.
- 12.15.4 If the Disputed Determination falls within either clause 12.15.2.2, 12.15.2.3, or 12.15.2.4 the Reviewing Authority shall allocate all disputes relating to it to the Certification Reviewing Authority.

12.15.5 Medical Reviewing Authority

- 12.15.5.1 In consultation with the Medical Advisory Panel, where applicable, the Trustees shall appoint 1 (one), qualified medical practitioner with experience in the evaluation of respiratory impairment and occupational lung diseases to fulfil the dispute resolution role of the Medical Reviewing Authority.
- 12.15.5.2 The Trustees may remove the medical practitioner referred to in clause 12.15.5.1 with good cause or on reasonable grounds.
- 12.15.5.3 If the Disputed Determination falls within clause 12.15.2.1:
- 12.15.5.3.1 the Medical Reviewing Authority shall review the Certificate of Medical Finding, the Medical Report to which it relates, and all further ancillary documentation, and may consult with one or more medical practitioners, including the Accredited Practitioner who issued the Medical Report and the medical practitioner (or practitioners) who constituted the Medical Certification Panel that issued the Certificate of Medical Finding;
- 12.15.5.3.2 the Medical Reviewing Authority, in performing its review, shall apply the principles for determining diagnoses, and the criteria for Qualifying Diseases, contained in Schedule H;

- 12.15.5.3.3 the Medical Reviewing Authority may confirm and uphold the Certificate of Medical Finding, and this shall be communicated to the Disputing Claimant; and
- 12.15.5.3.4 the Medical Reviewing Authority may rescind the whole or any part of the Certificate of Medical Finding and substitute for it such determination as it may decide.
- 12.15.5.4 If the Medical Reviewing Authority exercises its powers in clause 12.15.5.3.4, the substituted determination shall be deemed to be a determination of the Medical Certification Panel, and (notwithstanding anything to the contrary in clause 12.7.11) the Disputing Claimant shall follow the claims process in this Trust Deed from the stage of being issued the original Certificate of Medical Finding, but with the substituted determination.
- 12.15.5.5 Notwithstanding anything to the contrary in clause 12.7.11, if, during its review of the Disputed Determination and ancillary documentation, the Medical Reviewing Authority is unsatisfied with the method or standard used by the Accredited Practitioner to compile the Medical Report, it may set aside the original Medical Report and instruct the Disputing Claimant and the relevant Claims Lodgement Officer handling his claim, that he should undergo a new medical examination by another Accredited Practitioner and be issued with a new Medical Report that will replace the original report (and further steps in the claims process that he may have undergone) in all respects, and he shall follow the claims process in this Trust Deed from the stage of being issued a Medical Report.
- 12.15.5.6 The determination of the Medical Reviewing Authority in each case shall be final and binding on the Disputing Claimant and the Trustees, unless the Trustees determine that the Medical Reviewing Authority has clearly and manifestly misapplied the principles for determining diagnoses, and the criteria for Qualifying Diseases, contained in Schedule H, in which event the determination shall be referred back to the Medical Reviewing Authority for reconsideration.
- 12.15.5.7 The Medical Reviewing Authority shall act as an expert and not an arbitrator.
- 12.15.5.8 The Trustees shall use their reasonable endeavours to procure that the medical practitioner referred to in clause 12.15.5.1 provides the services referred to in this Trust Deed as being applicable to the Medical Reviewing Authority, and complies with the provisions of this clause 12.15 as if he were a party to this Trust Deed.
- 12.15.6 Certification Reviewing Authority
- 12.15.6.1 The Trustees shall appoint one independent person to fulfill the dispute resolution role of the Certification Reviewing Authority.

- 12.15.6.2 The Trustees may remove the person referred to in clause 12.15.6.1 with good cause or on reasonable grounds.
- 12.15.6.3 If the Disputed Determination falls within either clause 12.15.2.2 or 12.15.2.3:
- 12.15.6.3.1 the Certification Reviewing Authority shall review the Disputed Determination and all relevant documentation that the Disputed Determination was based upon and all further ancillary documentation, and may consult with one or more experts, but shall accept and may not challenge the findings in the Certificate of Medical Finding;
- 12.15.6.3.2 the Certification Reviewing Authority may confirm and uphold the Disputed Determination, and this shall be communicated to the Disputing Claimant; and
- 12.15.6.3.3 the Certification Reviewing Authority may rescind the whole or any part of the Disputed Determination and substitute for it such determination as it may decide.
- 12.15.6.4 If the Certification Reviewing Authority exercises its powers in clause 12.15.6.3.3, the substituted determination shall be deemed to be a determination of the Trust Certification Committee, and (notwithstanding anything to the contrary in clause 12.7.11) the Disputing Claimant shall follow the claims process in this Trust Deed from the stage of being issued the original determination in question, but with the substituted determination.
- 12.15.6.5 If the Disputed Determination falls within clause 12.15.2.4:
- 12.15.6.5.1 the Certification Reviewing Authority shall review the Notice of Ineligibility;
- 12.15.6.5.2 the Certification Reviewing Authority may confirm and uphold the Notice of Ineligibility, and this shall be communicated to the Disputing Claimant; and
- 12.15.6.5.3 the Certification Reviewing Authority may rescind the Notice of Ineligibility and instruct the relevant Claims Lodgement Officer to continue processing the Disputing Claimant's claim and follow the claims process in this Trust Deed.
- 12.15.6.6 The determination of the Certification Reviewing Authority in each case shall be final and binding on the Disputing Claimant and the Trustees, unless the Trustees determine that the Certification Reviewing Authority has clearly and manifestly misapplied the principles of this Trust Deed when making its determination, in which event the determination shall be referred back to the Certification Reviewing Authority for reconsideration.
- 12.15.6.7 The Certification Reviewing Authority shall act as an expert and not an arbitrator.
- 12.15.6.8 The Trustees shall use their reasonable endeavours to procure that the person referred to in clause 12.15.6.1 provides the services referred to in this Trust Deed as being applicable

to the Certification Reviewing Authority, and complies with the provisions of this clause 12.15 as if he were a party to this Trust Deed.

13. CLAIMS OF SETTLING CLAIMANTS WHO ARE LIVING AT THE EFFECTIVE DATE AND DIE THEREAFTER

13.1 If a Settling Claimant is living as at the Effective Date but dies before lodging a claim with a Claims Lodgement Officer, the executor of his estate (**Executor**) may lodge a claim in his stead, and all provisions in this Trust Deed relating to Settling Claimants, Lodging Settling Claimants, Silicosis Claimants, Tuberculosis Claimants and Historical Tuberculosis Claimants shall apply mutatis mutandis to the Executor.

13.2 If a Settling Claimant lodges a claim with a Claims Lodgement Officer but dies before the Payment Administrator processes payment of the Benefit, the provisions of clause 13.1 shall apply from the stage of the claims process at which the Settling Claimant died and onwards.

13.3 Nothing in this clause 13 shall be construed as relaxing in respect of the Executor any requirements that the Settling Claimant would, had he been alive, have needed to satisfy in order to be Certified and claim Benefits as an Eligible Claimant, including:

13.3.1 documentary requirements;

13.3.2 claims process steps; or

13.3.3 compliance with the definitional elements of the relevant type of Eligible Claimant.

PART E: TRUSTEES

14. TRUSTEES

14.1 The Trustees have fiduciary duties to ensure that Eligible Claimants receive Benefits to which they are entitled under this Trust Deed during the subsistence of the Trust.

14.2 Initial Trustees

14.2.1 It is recorded that by their signature to this Trust Deed, the initial Trustees accept their appointment as Trustees of the Trust; and

14.2.2 The initial Trustees shall be responsible for this Trust Deed's initial lodgement with the Master and procuring for themselves the issue of letters of authority from the Master.

14.3 **Appointment of Trustees**

- 14.3.1 There shall at all times be not less than 5 (five) nor more than 7 (seven) Trustees.
- 14.3.2 If at any time the number of Trustees falls below 5 (five), the remaining Trustee or Trustees shall be entitled to continue to act in all matters affecting the Trust pending the appointment of a new trustee (or new trustees).
- 14.3.3 Without derogation from clause 14.3.2, if the persons in clauses 14.3.5 and 14.3.6 have not appointed a new trustee (or new trustees) within 3 (three) calendar months of the number first falling below 5 (five), the Agent shall appoint a new trustee (or new trustees) such that the number of Trustees shall be not less than 5 (five), and such new trustee (or new trustees) shall serve as Trustees until they are replaced by the persons in clauses 14.3.5 and 14.3.6.
- 14.3.4 The Agent shall be entitled to appoint 3 (three) Trustees from time to time and to replace and fill any vacancy in respect of any such Trustee, and to rotate such Trustee with another Trustee from time to time. Abraham Joseph van Vuuren, Kgomotso Mmathuto Molebatsi and Michael Edward Courtney Murray shall be deemed to have been appointed by the Agent.
- 14.3.5 The Claimants' Attorneys shall be entitled to appoint 2 (two) Trustees from time to time and to replace and fill any vacancy in respect of any such Trustee, and to rotate such Trustee with another Trustee from time to time. Janet Yetta Love and Sophia Kisting shall be deemed to have been appointed by the Claimants' Attorneys.
- 14.3.6 The Minister for the Department of Health shall be entitled to appoint 1 (one) Trustee from time to time and to remove, replace and fill any vacancy in respect of such Trustee, provided that such trustee be either the Compensation Commissioner for Occupational Diseases, the Minister or the Deputy Minister for the Department of Health.
- 14.3.7 The Agent and the Claimants' Agent shall be entitled jointly to appoint an additional 1 (one) Trustee from time to time (**Consensus Trustee**), and to remove, replace and fill any vacancy in respect of such Trustee by agreeing in writing to do so, which agreement may not be unreasonably withheld or delayed, and which agreement will be deemed to have been given if it is unreasonably withheld or delayed.
- 14.3.8 Subject to clause 14.3.9, the Trustees shall be entitled to be paid for discharging their duties as Trustees, and such fees shall be determined by agreement between the Agent and the Claimants' Agent (which agreement may not be unreasonably withheld or delayed, and which agreement will be deemed to have been given if it is unreasonably withheld or delayed).

- 14.3.9 The Trustee appointed by the Minister for the Department of Health, in terms of clause 14.3.6, shall not be entitled to be paid for discharging his duties as Trustee.
- 14.3.10 Any appointment, removal, rotation or replacement of a Trustee in terms of clauses 14.3.4 to 14.3.6 (both inclusive) shall be made by written notice to the Trustees, signed by the Agent or the Claimants' Attorneys whichever is applicable and shall be operative, subject to the requirements of clause 14.3.12 below, as soon as the written notice is delivered to the Trustees.
- 14.3.11 The giving by the Claimants' Attorneys of any written notice in terms of clause 14.3.10 shall be effective if that notice is signed by at least 2 (two) of the Claimants' Attorneys or the Claimants' Agent.
- 14.3.12 A Trustee whose appointment has become operative shall only be entitled to act as a Trustee in terms of this Trust Deed after he has delivered to the Trustees a written acceptance of his appointment and after he has been duly authorised to act as a Trustee in terms of the Trust Property Control Act. The Trustees shall pass all such resolutions as are reasonably required to give effect to the provisions of this clause 14.3.

14.4 **Disqualification of Trustees**

The following persons shall be disqualified from acting as Trustee:

- 14.4.1 any person who would be disqualified from acting as a director of a company in terms of section 69(8)(a) of the Companies Act;
- 14.4.2 any person removed from an office of trust on account of misconduct;
- 14.4.3 any person whose estate has been sequestrated and has not yet been rehabilitated;
- 14.4.4 any person who the Master: (i) refuses to grant letters of authority to; or (ii) requires to provide security as a Trustee;
- 14.4.5 any person who has been declared by a competent court to be mentally ill or incapable of managing his own affairs or who is by virtue of the Mental Health Care Act, 2002, detained as a State patient or as an involuntary mental health care user in a health establishment;
- 14.4.6 any person who has been convicted in South Africa or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to either imprisonment without the option of a fine or a fine in excess of R1 000 (one thousand Rand); and
- 14.4.7 any person whose appointment as a Trustee would, in the reasonable opinion of the Agent, cause reputational harm to any of the Founders or their Affiliates.

14.5 **Vacation of Office of Trustee**

14.5.1 The office of a Trustee shall be vacated if:

14.5.1.1 he becomes disqualified in terms of clause 14.4 above; or

14.5.1.2 he resigns his office:

14.5.1.2.1 by not less than 60 (sixty) days' (or such shorter period as the remaining Trustees or Trustee may agree to) written notice to the remaining Trustees or Trustee;

14.5.1.3 he dies;

14.5.1.4 his health deteriorates to an extent that he or the Agent determines to materially effect his ability to discharge his duties as Trustee;

14.5.1.5 80% (eighty percent) of all the Trustees (excluding the Trustee in question) vote to remove a Trustee from office; or

14.5.1.6 the Agent and the Claimants' Agent agree in writing that he shall be removed from office.

14.5.2 No Trustee shall have the right during his lifetime or by his last will to individually appoint his successor, an alternative Trustee, or any other person to serve as Trustee in his place and stead.

15. **PROCEEDINGS OF TRUSTEES**

15.1 **AGM**

15.1.1 The Trustees shall convene at least 1 (one) meeting of the Trustees within 6 (six) months of the end of each financial year of the Trust (**AGM**).

15.1.2 The Founders, the Agent, the Claimants' Agent and the general public shall have the right to attend the AGM. The Founders, the Agent, the Claimants' Agent shall be given at least 14 (fourteen) days' written notice of such AGM, or such shorter notice as may be agreed to by the Agent and the Claimants' Agent.

15.1.3 At the AGM the Trustees shall present an overview of the Trust's operations and the financial reports of the Trust for each financial year of the Trust.

15.2 **Trust Meetings**

15.2.1 Subject to clause 15.2.2, any Trustee is at all times entitled to convene a meeting of the Trustees by giving 14 (fourteen) days' written notice to all Trustees, or such shorter notice as

may be agreed by all the Trustees: (i) in writing, prior to the meeting; or (ii) by resolution at the meeting.

- 15.2.2 Trust meetings shall not be held from 10 December until 10 January (both exclusive) each year unless such meeting is agreed by all the Trustees: (i) in writing, prior to the meeting; or (ii) by resolution at the meeting.
- 15.2.3 The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.
- 15.2.4 The Trustees may participate in a meeting of the Trustees by means of telephone or video conference or similar equipment by means of which all persons participating in the meeting can hear each other at all times and any such participation in a meeting shall constitute presence in person at the meeting.
- 15.2.5 For a quorum to exist at meetings of the Trustees, at least 5 (five) Trustees shall be present.
- 15.2.6 Save as may be expressly provided otherwise in this Trust Deed, decisions to be taken by the Trustees present at a meeting of Trustees shall take place by majority vote with each Trustee being entitled to exercise 1 (one) vote.
- 15.2.7 The Trustees shall keep minutes of their meetings in writing and all resolutions passed by the Trustees at their meetings shall be duly signed by the chairperson of the Trustees, or the chairperson of the relevant meeting (if not the chairperson of the Trustees).

15.3 **Chairperson**

The Trustees shall appoint the Consensus Trustee as the first chairperson for the initial 2 (two) year period from the Effective Date. Thereafter the Trustees shall appoint one of the Trustees as chairperson for each subsequent 12 (twelve) calendar month period during the life of the Trust.

15.4 **Written resolutions**

Provided that each Trustee receives a copy of the proposed resolution, a resolution in writing signed by at least 70% (seventy percent) of the Trustees or agreed to by at least 70% (seventy percent) of the Trustees via e-mail shall be valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted, and such resolution may be signed in counterparts.

15.5 **Signing authority**

The Trustees are entitled to authorise 1 (one) of them to sign any and all documents on behalf of the Trustees, subject to such terms and conditions as may be agreed to by the Trustees from time to time.

16. POWERS OF TRUSTEES

- 16.1 The powers of the Trustees as set out in this Trust Deed are powers which are conferred upon them as Trustees of the Trust and to enable them to administer the Trust Fund and not for their personal benefit. The extent of the powers vested in the Trustees must be construed in accordance with, and subject to, the Trust Object.
- 16.2 The Trustees shall have such powers as may be necessary for, or incidental to, the carrying out of their duties as set out in this Trust Deed and in accordance with the provisions of the Statutes. Without derogation from the generality of the foregoing, the Trustees shall have the following specific powers:
- 16.2.1 receive all claims from Lodging Claimants;
- 16.2.2 manage the processing of claims from Lodging Claimants, including the determination of whether or not any such claims are accepted;
- 16.2.3 pay out the Benefits to Eligible Claimants;
- 16.2.4 pay out any Special Award as contemplated in clause 6;
- 16.2.5 exercise discretion in relation to the records falling within the definition of Service Records, as contemplated in, and subject to, clause 12.13;
- 16.2.6 receive and accept donations, settlements, awards and contributions from the Founders as contemplated in this Trust Deed;
- 16.2.7 delegate any of their powers to committees consisting of one or more Trustees or such other persons as the Trustees may determine, provided that there shall always be at least 1 (one) Trustee on each such committee;
- 16.2.8 appoint experts in every field thereto to enable them to fulfil their mandate;
- 16.2.9 appoint executives, including a chief executive officer, chief financial officer and chief operating officer, to enable them to fulfil their mandate;
- 16.2.10 convert, vary or realise any investments in their discretion and re-invest any proceeds but only to the extent authorised in terms of this clause;
- 16.2.11 enter into contracts which are necessary or requisite to achieve or fulfil the Trust Object;
- 16.2.12 exercise the provisions of clause 28 in respect of a Founder that defaults in its payment obligations to the Trust;

- 16.2.13 seek and inspect the employment records and medical records of the Companies or appoint a representative to inspect those records, but on the understanding that this clause 16.2.13 does not impose upon any of the Companies any greater obligation to make those records available than expressed in the Settlement Agreement; and
- 16.2.14 seek and review all personal, employment and medical records from TEBA Limited, mining organisations, and any office of South African government or governments in other countries;
- 16.2.15 disclose to and collect from industry databases, credit bureaus and other databases, including (without limitation) the databases of the Medical Bureau for Occupational Diseases (MBOD), the Compensation Commission for Occupational Diseases (CCOD), previous employers and/or pension or provident funds, personally identifiable information about Claimants;
- 16.2.16 obtain health records of Lodging Settling Claimants and Contended Deceased Individuals, including by assisting Lodging Claimants to obtain such records;
- 16.2.17 compile and disclose for any party to the Class Action Litigation, at the cost and expense of such party, the personal contact details of any Claimant (as defined in the Settlement Agreement) which may be required pursuant to an order of court or for discovery in such proceedings.
- 16.3 Notwithstanding anything to the contrary in this clause, the Trustees shall invest the Trust Fund or any portion thereof only in any South African ZAR money market fund which carries a national scale rating of AA or higher, or any short-term deposit (3 (three) months or less) with any one of South Africa's four largest banks;
- 16.4 The Trustees shall have the power (and are obliged to exercise that power) to do all things and to sign all such documents as may be necessary to fulfil the specific obligations referred to in this Trust Deed.
- 16.5 The Trustees shall have the power to use, publish or disseminate in anonymised form (maintaining the anonymity of the mine workers and the Companies), the information and data gathered during the course of the operation of the Trust solely for the purpose of advancing public health, or for medical or scientific research purposes. Any proceeds that are derived from the usage, publication or dissemination of such information shall be used solely for the Trust Object.
- 16.6 The Trustees shall have the power to publish notices to Claimants throughout the life of the Trust.

17. **DUTIES OF THE TRUSTEES**

- 17.1 The Trustees shall be obliged to fulfil the Trust Object as recorded in clause 3 as soon as is reasonably possible, but within the subsistence of the Trust as set out in clause 21 below.
- 17.2 The Trustees shall be obliged to develop an annual financial and operational plan to accomplish the Trust Object, including but not limited to:
- 17.2.1 marketing and information;
 - 17.2.2 prioritising locating and medical examination of potential Eligible Claimants;
 - 17.2.3 establishing and maintaining the capacity for administering medical examinations;
 - 17.2.4 establishing and maintaining locations for Claims Lodgement Officers to execute their duties;
 - 17.2.5 establishing and maintaining information technology, budgeting and general administration systems.
- 17.3 The Trustees shall use their reasonable endeavours to procure that the personnel of the Trust (including the Claims Lodgement Officers, the Accredited Practitioners, the Medical Certification Panel, the Trust Certification Committee, the Payment Administrator, the Medical Reviewing Authority and the Certification Reviewing Authority) and any third party service providers comply with the provisions of this Trust Deed insofar as the provisions are capable of applying to them.
- 17.4 Apart from the common law duties which attach to the office of trustee, the Trustees shall be subject to the duties laid down in the Trust Property Control Act, namely, to:
- 17.4.1 ensure that the original of this Trust Deed is filed with the Master in accordance with the provisions of the Trust Property Control Act;
 - 17.4.2 refrain from acting as Trustees until they are in possession of a letter of authority from the Master to so act;
 - 17.4.3 receive and hold the Trust Fund for the benefit of the Eligible Claimants who are entitled to Benefits;
 - 17.4.4 take possession of all documents of title and other documents relating to the affairs of the Trust for safekeeping;
 - 17.4.5 ensure that proper books are kept for the affairs of the Trust;

- 17.4.6 keep all assets of the Trust Fund separate from their own personal property and if applicable registered in the name of the Trust so that they may be identified as assets of the Trust Fund;
- 17.4.7 refrain from holding or disposing of any assets of the Trust Fund for their personal benefit, or for the benefit of their estates, and generally to act in a prudent and responsible manner as would be expected from persons who are in charge of the affairs of another person;
- 17.4.8 unless compelled by law or an order of court or for any other practical reasons, refrain from disclosing any records containing the identity of the Lodging Claimants, the Lodging Deceased Individuals or the affairs of the Trust, except as permitted by the provisions of this Trust Deed;
- 17.4.9 while the Trust is in force, take and hold possession of all assets comprising the Trust Fund from time to time, including title deeds and other documents and to ensure their preservation and safe keeping for the duration of the Trust; and
- 17.4.10 exercise the provisions of clause 28 in respect of a Founder that defaults in its payment obligations to the Trust.

18. EXEMPTIONS FOR TRUSTEES

- 18.1 The Trustees shall be exempt from any obligation to furnish security in connection with their appointment or for the due administration of the Trust to the Master or any other person, body or authority, as provided for in the Trust Property Control Act or any other law relating to Trusts and the protection of trust moneys, and the Master and any such other person, body or authority are hereby directed to dispense with such security.
- 18.2 Subject to the Trust Property Control Act:
 - 18.2.1 no Trustee shall be liable to make good to the Trust or anyone claiming through the Trust any loss occasioned or sustained by any cause, howsoever arising, except such loss as may arise from or be occasioned by his own personal dishonesty or other wilful misconduct or gross negligence;
 - 18.2.2 no Trustee shall be liable for any act of dishonesty or other misconduct committed by any other Trustee unless he knowingly allowed it or was an accessory to it;
 - 18.2.3 the Trustees shall be indemnified out of the Trust Fund against all claims and demands of whatsoever nature that may be made upon them arising out of the proper exercise or purported proper exercise of any of the powers conferred upon them under this Trust Deed; and

- 18.2.4 if the Trustees make any bona fide payment to any Person they believe to be entitled to the payment under the terms of this Trust Deed and if it is subsequently found that the recipient was not entitled to the payment, the Trustees shall not be liable or responsible to the Trust or anyone claiming through the Trust for the payment so made.

PART F: ACCOUNTING AND RELATED MATTERS

19. ACCOUNTS AND REPORTS

- 19.1 The Trustees shall ensure that proper financial books and records are kept concerning the affairs of the Trust and the administration of the Trust Fund which reflect truly and accurately their administration of the affairs and business of the Trust and record the transactions and financial position of the Trust.
- 19.2 All those financial books and records, together with all other papers and documents of the Trust, shall be kept at such places as the Trustees may determine from time to time and shall be accessible to each Trustee so that he can inspect them at all reasonable times.
- 19.3 The books of the Trust shall be audited. The Trustees shall prepare and sign annual statements of account of the Trust for each financial year, and shall ensure that the accounts and records are reported on and audited by the Auditors.
- 19.4 The Auditors shall have the right of access at all times to the books of account, vouchers and records of the Trust, and shall be entitled to require from the Trustees, employees of the Trust and other persons appointed by the Trustees to provide services and carry out functions in terms of this Trust Deed, such information and explanations as may be necessary for the performance of their duties as auditors of the Trust.
- 19.5 Without limitation to the obligations of the Trustees to keep proper records for the purposes hereof, the Trustees shall maintain comprehensive records of all Lodging Claimants assessed, including details of Lodging Settling Claimants or Contended Deceased Individuals who have been determined to have, or to have had, a Qualifying Disease and have been identified with reasonable certainty, based on, without limitation, their names, identity numbers or passport numbers and ID books or passports, employee numbers (if available), and biometric recognition (if available).
- 19.6 The Agent and the Claimants' Agent shall have the right to access and inspect the records referred to in clause 19.5, and the Agent shall have a right to share such records with the Founders and their Affiliates, provided that such disclosure has been consented to by the Eligible Claimants and other data subjects.

- 19.7 As soon as practicable following (i) 6 (six) months from the commencement of the Trust's financial year, and (ii) the financial year end date of the Trust (as applicable), the Trustees shall provide to the Agent and the Claimants' Agent (i) a first report covering the period commencing on the beginning of the Trust's financial year to 6 (six) months thereafter, and (ii) a second report covering the period commencing on the beginning of the Trust's financial year to the financial year end date of the Trust. The reports shall set out the following for their respective reporting periods:
- 19.7.1 a detailed description of (i) the claimant locating projects completed from the Trust Commencement Date to the date of the report, (ii) the claimant locating projects currently underway as at the date of the report, and (iii) planned future claimant locating projects. This should include information relating to the target populations of the claimant locating projects, the status, progress and expected timing of such projects;
- 19.7.2 the detailed build-up of each Founder's internally recorded benefit and expense account (as described in Schedule G) dated from the previous financial year end date of the Trust to the date of the report (including information per Founder such as the Contributions paid by the Founder, attributable claims per month, attributed expenses per months, rate of monthly investment return used, and any year-end adjustments made);
- 19.7.3 actual expenses incurred by the Trust since the previous financial year end date of the Trust, broken down per category of expense (for example: per claimant locating project, medical examination costs, Certification process costs, governance costs, Benefit payment costs, etcetera);
- 19.7.4 projected expenses for the next Annual Period (broken down per category of expense);
- 19.7.5 comprehensive claims data from the Trust Commencement Date to the date of the report. This will include the following data fields (as applicable):
- 19.7.5.1 internal reference number of claim;
- 19.7.5.2 whether the Lodging Claimant is a former mineworker, current mineworker or executor of a deceased mineworker or Dependent of a deceased mineworker;
- 19.7.5.3 the name, age, ID number or passport number, and employee number (if available) of the Lodging Claimant and/or Contended Deceased Individual;
- 19.7.5.4 date of birth of the Lodging Settling Claimant or Contended Deceased Individual;
- 19.7.5.5 date of death of a deceased Lodging Settling Claimant or Contended Deceased Individual;

- 19.7.5.6 district, province and country of residence of a Lodging Settling Claimant;
 - 19.7.5.7 date the Lodging Settling Claimant or Contended Deceased Individual was last employed (if they are no longer employed);
 - 19.7.5.8 full service history of Lodging Settling Claimant or Contended Deceased Individual;
 - 19.7.5.9 main occupation(s) of Lodging Settling Claimant or Contended Deceased Individual while employed on the mine;
 - 19.7.5.10 details of the Claims Lodgement Officer who is responsible for the claim;
 - 19.7.5.11 date the Lodging Settling Claimant or Lodging Dependent Claimant first approached the Claims Lodgement Officer;
 - 19.7.5.12 status of claim and date of each status (left blank if not applicable):
 - 19.7.5.12.1 Lodgment Documents satisfactorily submitted;
 - 19.7.5.12.2 Medical Report issued or Approved ODMWA Certificate provided or Tuberculosis Certificate provided;
 - 19.7.5.12.3 Certificate of Medical Finding issued (and outcome: the specific Qualifying Disease, the primary cause of death finding (if applicable), or Medically Ineligible);
 - 19.7.5.12.4 Certification issued;
 - 19.7.5.12.5 Notice of Ineligibility issued (and reason if applicable); and
 - 19.7.5.12.6 Benefit paid;
 - 19.7.5.13 Benefit amount calculated (before application of Benefit Modifiers) and date calculated;
 - 19.7.5.14 Benefit Modifiers applied (expressed as either a percentage or a Rand amount) broken down per Benefit Modifier listed in clauses 5.6.1.1 to 5.6.1.5 (both inclusive);
 - 19.7.5.15 Benefit due to Eligible Claimant after the application of the Benefit Modifiers;
 - 19.7.5.16 Benefit allocation per Founder; and
 - 19.7.5.17 any further information that the Agent, the Claimants' Agent and the Trustees shall agree to in writing from time to time.
- 19.8 The Trustees shall ensure that all Lodging Settling Claimants and Lodging Dependent Claimants (with respect to themselves and with respect to Contended Deceased Individuals) to be

assessed shall be required to consent to the Trust (or persons appointed by it) disclosing personally identifiable information, including x-rays and medical records produced to relevant Persons in accordance with the provisions of this Trust Deed, which includes consent to disclose to and between the Parties and their Affiliates, and to third parties stipulated in clause 19.9.

- 19.9 Subject to the condition that the Agent will not disclose the information to any third party save for professional advisors or in order to assert or pursue any remedy or claim, whether for contribution, indemnity or otherwise against a third party (but in that event information may be disclosed only to the extent strictly necessary and on terms of strict confidentiality):
- 19.9.1 the Trustees shall provide the Agent with details of the amount of all Benefits paid to each Eligible Claimant, copies of the documents and records referred to in clause 19.8, disclosure of which has been consented to by the Eligible Claimants, and any other information reasonably requested by the Agent in relation to the Eligible Claimants and the amounts paid to them; and
- 19.9.2 the Agent shall have a right to share the information referred to in clause 19.9.1 and the reports referred to in clause 19.7 with the Founders and their Affiliates, provided that such disclosure has been consented to by the Eligible Claimants and other data subjects.
- 19.10 The Trustees shall provide an audited final reconciliation at the termination of the Trust of all monies received, accrued and disbursed and any surplus available, and shall, prior to the dissolution of the Trust, make available to the Agent all information concerning the operation of the Trust to which it is entitled in terms of this Trust Deed.
- 19.11 The Trustees shall produce an annual report which shall incorporate (but not be limited to) the audited annual statements of account, together with information relating to:
- 19.11.1 the number of Lodging Claimants that were located during the preceding year and since the Trust Commencement Date;
- 19.11.2 the number of claims lodged with the Claims Lodgement Officers during the preceding year and since the Trust Commencement Date;
- 19.11.3 the number of Lodging Claimants that were medically examined during the preceding year and since the Trust Commencement Date;
- 19.11.4 the number of Eligible Claimants who received a Benefit from the Trust during the preceding year and since the Trust Commencement Date, and a breakdown of the categories of Eligible Claimant who have received such Benefits;

- 19.11.5 the aggregate amount of all Benefits so paid during the preceding year and since the Trust Commencement Date and a breakdown of the aggregate amount of all Benefits so paid to each category of Eligible Claimant; and
- 19.11.6 the fees, expenses, disbursements and emoluments charged to, paid or incurred by or on behalf of the Trust; and
- 19.11.7 the number of claims in process, lodged but not yet medically certified, medically certified but not yet Certified, Certified but not yet paid.
- 19.12 The Trustees shall provide copies of the annual report referred to in clause 19.11 to the Agent and the Claimants' Agent.
- 19.13 The Agent and the Claimants' Agent shall have the right to access and inspect the underlying records which informed the annual report and, in particular, the information referred to in clause 19.11.

PART G: AMENDMENT, DURATION AND TERMINATION

20. AMENDMENTS TO THIS TRUST DEED

The Trustees shall be entitled to amend this Trust Deed from time to time by way of a resolution of Trustees provided that:

- 20.1 the amendments are reduced to writing;
- 20.2 the amendments do not adversely affect the rights of the Eligible Claimants in terms of this Trust Deed; and
- 20.3 the Trustees may not make any amendments to this Trust Deed without the prior written consent of the Agent and Claimants' Agent.

21. TERMINATION OF THE TRUST

- 21.1 Subject to clause 21.2, the Trust shall subsist until the Agent notifies the Trustees and Claimants' Agent in writing that it shall terminate (**Termination Notice**).
- 21.2 Subject to clause 21.3, the Agent may not deliver the Termination Notice to the Trustees before:
- 21.2.1 the 1st (first) anniversary of the date on which the Qualifying Claims Period will have expired; or
- 21.2.2 all and any legitimate outstanding Benefits that will have been claimed by Eligible Claimants during the Qualifying Claims Period, in accordance with the provisions of this Trust Deed,

have been paid or have been transferred by the Trustees to an appropriate person who will administer such payment after termination of the Trust,

whichever is the later; and any Termination Notice delivered in breach of the foregoing provisions of this clause 21.2 shall be of no force or effect.

21.3 The Trustees shall, without delay after receiving written notice to do so from the Agent, transfer to the appropriate person contemplated in clause 21.2.2, all and any legitimate outstanding Benefits that will have been claimed by Eligible Claimants during the Qualifying Claims Period, but remain unpaid because the Payment Administrator has not, for any reason, been able to pay such Benefits to such Eligible Claimants.

21.4 Notwithstanding anything to the contrary in clause 21.2, the Agent may deliver the Termination Notice to the Trustees and the Claimants' Agent at any time after failure to fulfill any of the Conditions in the Settlement Agreement..

21.5 Without undue delay after receipt by the Trustees of the Termination Notice, the Trustees shall realise any assets of the Trust Fund (other than cash or the like), and, whether or not the Trust has any assets to realise, first pay the claims of all creditors of the Trust out of the Trust Fund. If thereafter there remains any surplus, the net surplus will be paid (less any amounts required to be withheld for tax purposes) to the Founders (or their designated agent) in proportions that the Agent will communicate to the Trustees.

PART H: GENERAL

22. TRUST ADVISORY COMMITTEE

22.1 As soon as is practicable after the Effective Date, the Trustees shall establish a committee (**Trust Advisory Committee**) which shall, in the discretion of the Trustees and to the extent that it is reasonably practicable, comprise of representatives from government, recognised trade unions, community leaders and non-governmental organisations, and any other bodies or entities which the Trustees consider may be able to contribute to the purpose for which the Trust Advisory Committee will be established.

22.2 The Trustees shall appoint the members of the Trust Advisory Committee in their discretion from time to time, other than the members referred to in clause 22.3.

22.3 Each of the Agent and the Claimants' Agent shall at all times be entitled to appoint 1 member to the Trust Advisory Committee.

22.4 The Trustees shall convene meetings of the Trust Advisory Committee on a biannual basis, once within 6 (six) months before each AGM and once within 6 (six) months following each AGM, or as more frequently as the Trustees shall decide from time to time (**Committee Meeting**).

- 22.5 At least 1 (one) of the Trustees shall attend Committee Meetings.
- 22.6 Members of the Trust Advisory Committee shall be given at least 7 (seven) days' written notice of the Committee Meeting.
- 22.7 The Trust Advisory Committee shall, at each Committee Meeting, advise, give input to, and raise concerns with, the Trustee or Trustees who is/are present at that meeting regarding matters relating to the Trust.
- 22.8 The Trust Advisory Committee acts in an advisory capacity, and has no power, express, tacit or implied, to instruct the Trustees, and nothing in this clause 22 shall be construed otherwise.

23. BIENNIAL CONSULTATION BETWEEN THE TRUSTEES, AGENT AND CLAIMANTS AGENT

In the first Annual Period, and once every two years thereafter for the duration of the Qualifying Claims Period, the Trustees will meet with the Agent and the Claimants Agent to consult regarding, and determine, whether or not efficiencies can be effected to the claims process and whether or not timelines stipulated in Part B and/or Part D of this Trust Deed can be streamlined, including the time periods in 5.6.3 and 5.6.8.

24. FINANCIAL YEAR AND ACCOUNTING PERIOD

- 24.1 As soon as is practicable after the Trust Commencement Date, the Trustees shall take all necessary steps to ensure that the financial year end date of the Trust is set to coincide with the first anniversary of the last day of the calendar month in which the Effective Date falls.
- 24.2 The Trustees shall, in accordance with the Income Tax Act, 1962 (**ITA**), apply to the Commissioner for the South African Revenue Service to render accounts for a period ending on the Trust's financial year end (being the first anniversary of the last day of the calendar month in which the Effective Date falls, and that calendar date in every subsequent year).

25. TAX RETURNS AND TAX INFORMATION

- 25.1 The Trustees shall file, or procure the filing of, tax returns and other tax filings for the Trust in accordance with the ITA and the Tax Administration Act, 2011 and, if required, the Value Added Tax Act, 1991, and shall submit, or procure the submission of, with any such tax return, all relevant documents.
- 25.2 For administrative purposes, the Trustees shall register the Trust as an employer in terms of the ITA and shall, where relevant, comply with all required tax administrative processes including applications for tax directives and the filing of relevant tax returns and documents in respect of employees' tax, contributions in terms of the Unemployment Insurance Contributions Act, 2002

and skills levies in terms of the Skills Development Levies Act, 1999, relating to the benefits paid to Claimants and any fees payable in terms of the Trust Deed.

25.3 The Trustees shall, when so requested by the Commissioner for the South African Revenue Service in writing, make available for inspection all books of account, records or other documents relating to the Trust and answer all queries about them made by the Commissioner for the South African Revenue Service.

26. **ARBITRATION**

26.1 In the event of any dispute arising out of or relating to this Trust Deed, or the breach, termination or invalidity thereof, such dispute shall be settled by arbitration in accordance with the procedure outlined below. Any Party may give written notice to the other Parties to initiate the procedure set out below.

26.2 The Parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) days of the delivery of the notice referred to in clause 26.1, the arbitration shall take place in accordance with the UNCITRAL Arbitration Rules in force at the time of the dispute.

26.3 The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators (Southern Africa).

26.4 Unless agreed otherwise the arbitration shall be administered by the Parties.

26.5 The number of arbitrators shall be 1 (one).

26.6 The place of the arbitration shall be Sandton, South Africa.

26.7 Nothing in this clause 26 shall preclude any Party from seeking interim and/or urgent relief from a Court of competent jurisdiction and to this end the Parties hereby consent to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).

27. **JOINT LIABILITY OF THE FOUNDERS**

27.1 The liability of the Founders in terms of, and arising from, this Trust Deed shall be joint, in the following proportions:

27.1.1 For the period commencing on the Trust Commencement Date and terminating on the day preceding the second anniversary of the Payment Date for the Initial Benefit Contribution and for the period commencing on the Trust Commencement Date and terminating on the day preceding the first anniversary of the Payment Date for the Trust Administration Contributions:

27.1.1.1	African Rainbow Minerals Limited:	6.08% (six point zero eight percent)
27.1.1.2	Anglo American South Africa Limited percent)	20.72% (twenty point seven two percent)
27.1.1.3	AngloGold Ashanti Limited percent)	16.95% (sixteen point nine five percent)
27.1.1.4	South Deep Joint Venture	7.15% (seven point one five percent)
27.1.1.5	Harmony Gold Mining Company Limited percent)	21.66% (twenty one point six six percent)
27.1.1.6	Sibanye Gold Limited percent)	27.44% (twenty seven point four four percent)

27.1.2 For each Annual Period which falls within the Annual Contribution Period for the Benefit Contributions, the proportion of each Founder shall be calculated in accordance with the following equation, expressed as a percentage:

$$\text{Founder's proportion of liability} = \frac{A}{C}$$

Where:

A = a Founder's Benefit Contribution determined for that Annual Period (as may be amended by the Expert in accordance with the provisions of clause 10); and

C = the aggregate of all the Founders' Benefit Contributions determined for that Annual Period (as may be amended by the Expert in accordance with the provisions of clause 10).

27.1.3 For each Annual Period after the first Annual Period for Trust Administration Contributions, the proportion of each Founder shall be calculated in accordance with the following equation, expressed as a percentage:

$$\text{Founder's proportion of liability} = \frac{B}{D}$$

Where:

B = a Founder's Trust Administration Contribution determined for that Annual Period (as may be amended by the Expert in accordance with the provisions of clause 10); and

D = the aggregate of all the Founders' Trust Administration Contributions determined for that Annual Period (as may be amended by the Expert in accordance with the provisions of clause 10).

28. **DEFAULT**

- 28.1 If a Founder does not discharge its obligations in any Annual Period to pay into the Trust Bank Account the quarterly payment amount of its Benefit Contribution and/or Trust Administration Contribution (as may be amended by the Expert in accordance with clause 10) for that Annual Period within 5 (five) Business Days of the expiry of the quarterly payment date on which such quarterly payment amounts are due and payable in that Annual Period, then the Trustees shall give written notice (**Default Notice**) to the Agent of the Founder's failure to discharge its quarterly payment obligations. If the Founder's quarterly payment obligations are not fully settled for that quarter within 5 (five) Business Days of the Default Notice being received by the Agent, the Trustees shall be entitled to call on the guarantor and /or insurer of the Founder's obligation for the outstanding amounts for that Annual Period.
- 28.2 If during the subsistence of the Trust a Founder's guarantor and /or insurer does not cover its obligations, then if the Founder's quarterly payment obligations are not fully settled for that quarter within 5 (five) Business Days of the Default Notice being received by the Agent, the Trustees may give written notice to the Founder to initiate the arbitration procedure set out in clause 26 or otherwise seek relief in terms of clause 26.7.
- 28.3 In the event of clause 28.2, non-compounding mora interest at a per annum rate of 10% (ten percent) shall accrue on the Founder's outstanding obligations from the date of the Default Notice being delivered to the Agent until the date it is fully settled.
- 28.4 Each Founder may from time to time during the subsistence of the Trust replace the guarantee and/or insurance product, which guarantees and/or insures its obligations in favour of the Trustees, with any other guarantee and/or insurance product which is substantially not less favourable to the Trustees than the guarantee and/or insurance product it had at the Effective Date.
- 28.5 Each Founder shall, prior to each anniversary of the Effective Date, obtain and submit to the Trustees a report (Auditor's Report) from its external auditors in terms of the International Standard on Related Services (ISRS) 4400 (Engagements to Perform Agreed-upon Procedures Regarding Financial Information), or if such standard is no longer effective, the relevant applicable standard, confirming that such Founder's estimate of its financial obligations under this Trust Deed (being the sum of the estimated undiscounted future Benefit Contributions and Trust Administration Contributions over the remaining duration of the Trust) correspond with the

amounts included in the audited actuarial model used by such Founder to quantify its financial obligations under this Trust Deed for the Founder's most recent financial statements.

- 28.6 If after the second anniversary of the Effective Date, the Auditor's Report shows that a Founder's estimate of its financial obligations under this Trust Deed (being the sum of the estimated undiscounted future Benefit Contributions and Trust Administration Contributions over the remaining duration of the Trust) exceeds its prevailing guaranteed amount by more than 10%, such Founder shall provide top-up security to cover any shortfall, provided that such Founder shall not be required to provide the top-up security if it obtains and submits to the Trustees an updated Auditor's Report (to take account of any effluxion of time since the Auditor's Report was issued) showing that the Founder's estimate of its financial obligations under this Trust Deed (being the sum of the estimated undiscounted future Benefit Contributions and Trust Administration Contributions over the remaining duration of the Trust) no longer exceeds its prevailing guaranteed amount by more than 10%.
- 28.7 If after the second anniversary of the Effective Date, the Auditor's Report shows that a Founder's estimate of its financial obligations under this Trust Deed (being the sum of the estimated undiscounted future Benefit Contributions and Trust Administration Contributions over the remaining duration of the Trust) is less than its prevailing guaranteed amount, the Trustees may permit a reduction in the then prevailing guaranteed amount, provided that the Trustees shall not give their permission unless they are satisfied that the Eligible Claimants' rights and interests are not adversely affected thereby. The permission of the Trustees may not be unreasonably withheld or delayed.

29. **EARLY EXIT AND RELATED PROVISIONS**

- 29.1 The Trustees may permit any Founder (**Ceding Founder**) to cede any of its rights or delegate any of its obligations under this Trust Deed to any Person.
- 29.2 The Trustees may permit any Founder (**Exiting Founder**) to pay a full and final settlement amount to the Trust (**Final Settlement Amount**), in which event all and any liability (past, present and future) of the Exiting Founder in favour of the Trust and/or Trustees shall cease, and all and any rights (present and future) that it may have in terms of this Trust Deed will be forfeited, and it shall be deemed not to be a Party, and its consent for anything in terms of this Trust Deed (insofar as its consent would have been so required for any matter, prior to the payment of the Final Settlement Amount) shall no longer be required, including consent for the amendment of this Trust Deed.
- 29.3 The Final Settlement Amount is an amount proposed by the Exiting Founder to the Trustees and agreed to in writing by the Trustees, which agreement may not be unreasonably withheld or delayed.

- 29.4 The Exiting Founder shall:
- 29.4.1 provide the Trustees and the other Founders with its actuarial estimates of the proposed Final Settlement Amount together with supporting documents; and
- 29.4.2 provide the Trustees with a reasonable opportunity to consider the proposed Final Settlement Amount.
- 29.5 The Trustees may also permit any Founder (**Partially Exiting Founder**) to pay a full and final settlement amount to the Trust (**Partial Final Settlement Amount**) in respect of any Qualifying Mine, in which event all and any liability (past, present and future) of the Partially Exiting Founder in favour of the Trust and/or Trustees shall cease in relation to the Qualifying Mine, and all and any rights (present and future) that it may have in relation to the Qualifying Mine in terms of this Trust Deed will be forfeited.
- 29.6 The Partial Final Settlement Amount is an amount proposed by the Partially Exiting Founder to the Trustees and agreed to in writing by the Trustees, which agreement may not be unreasonably withheld or delayed.
- 29.7 The Partial Exiting Founder shall:
- 29.7.1 provide the Trustees and the other Founders with its actuarial estimates of the proposed Partial Final Settlement Amount together with supporting documents; and
- 29.7.2 provide the Trustees with a reasonable opportunity to consider the proposed Partial Final Settlement Amount.
- 29.8 The Trustees shall not give their permission for the purposes of clauses 29.1 to 29.7 unless they are satisfied that the Eligible Claimants' rights and interests are not adversely affected thereby. The permission of the Trustees may not be unreasonably withheld or delayed.
- 29.9 If a Founder notifies the Trustees that a Qualifying Mine has been permanently closed, then the Qualifying Period relating to such Qualifying Mine shall end on the date on which the Qualifying Mine was permanently closed.

30. **ADDRESSES FOR LEGAL PROCESS AND NOTICES**

- 30.1 The parties choose for the purposes of this Agreement the following addresses and email addresses:
- 30.1.1 **The persons listed in Schedule A**
- c/o the Agent**

150 Helen Road
Sandton
2196
Email address: Paul.Pretorius@goldfields.com &
CChater@AngloGoldAshanti.com
Marked for the attention of Paul Pretorius & Cindy
Chater

30.1.2 **African Rainbow Minerals Limited**

ARM House
29 Impala Road
Chislehurst
Sandton
Email address: ir.admin@arm.co.za
Marked for the attention of the Company Secretary

30.1.3 **Anglo American South Africa Limited**

44 Main Street
Johannesburg
2001
Email address: cosec.aajhb@angloamerican.com
Marked for the attention of the Company Secretary

30.1.4 **AngloGold Ashanti Limited**

76 Rahima Moosa Street
Newtown
Johannesburg
2001
Email address: rsanz@anglogoldashanti.com
Marked for the attention of the Company Secretary

30.1.5 **South Deep Joint Venture**

150 Helen Road
Sandton
2196
Email address: Taryn.Harmse@goldfields.com
Marked for the attention of EVP General Counsel

30.1.6 **Harmony Gold Mining Company Limited**

Randfontein Office Park
Cnr Main Reef Road and | Ward Avenue
Randfontein
1759
Email address: companysecretariat@Harmony.co.za
Marked for the attention of Company Secretary

30.1.7 **Sibanye Gold Limited**

Constantia Office Park, Bridgeview House
Ground Floor (Building 11), Lakeview Avenue
Cnr 14th Avenue and Hendrik Potgieter Street,
Weltevreden Park
1709
Email address: Hartley.dikgale@sibanyestillwater.com
Marked for the attention of Hartley Dikgale

30.1.8 **Abraham Joseph van Vuuren**

Email address: abre.vanvuuren@harmony.co.za
Marked for the attention of Abraham Joseph van
Vuuren

30.1.9 **Kgomotso Mmathuto Molebatsi**

Emailaddress:
kgomotso.molebatsi@sibanyestillwater.com
Marked for the attention of Kgomotso Mmathuto
Molebatsi

30.1.10 **Michael Edward Courtney Murray**

Email address: michael.murray@angloamerican.com
Marked for the attention of Michael Edward Courtney
Murray

30.1.11 **Janet Yetta Love**

Email address: janetlove@lrc.org.za
Marked for the attention of Janet Yetta Love

30.1.12 **Sophia Kisting**

Email address: Sophia.kisting@nioh.nhls.ac.za
Marked for the attention of Sophia Kisting

30.1.13 **Richard Spoor Inc. Attorneys**

Eton Building, Sherborne Square
5 Sherborne Road
Parktown
Email address: richard@richardspoorinc.co.za
Marked for the attention of Richard Spoor

30.1.14 **Abrahams Kiewitz Incorporated**

Penthouse, 6th Floor, Imperial Terraces
Carl Cronje Drive
Tyger Waterfront, Tygervalley
Bellville
Email address: charles@ak.law.za
Marked for the attention of Charles Abrahams

30.1.1 **Legal Resources Centre**

16th Floor Bram Fischer Towers
20 Albert Street
Johannesburg
Email address: carina@lrc.org.za
Marked for the attention of Carina Du Toit

30.1.2 **Motley Rice LLC**

Mt. Pleasant
Email address: melsner@motleyrice.com
Marked for the attention of Michael Elsner

30.1.3 **Hausfeld LLP**

United States
Email address: rlewis@hausfeld.com
Marked for the attention of Richard Lewis

30.2 Any legal process to be served on any of the Parties may be served at the physical address specified in clause 27 and each Party chooses that address as its *domicilium citandi et executandi* for all purposes under this Trust Deed.

- 30.3 A Party who gives a notice or other communication to any other Party in terms of this Trust Deed shall simultaneously give a copy of such notice or other communication to the other Parties to this Trust Deed.
- 30.4 Any notice or other communication to be given to any of the Parties in terms of this Trust Deed shall be valid and effective only if it is given in writing, which shall be deemed to include electronic communication.
- 30.5 A notice to any Party which is delivered to a Party by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours (being 09h00 – 16h00).
- 30.6 Each notice by email to a Party at the email address specified in clause 27 shall be deemed to have been received (unless the contrary is proved) within 24 (twenty four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 24 (twenty four) hours of the beginning of the next Business Day at the destination after it is transmitted, if it is transmitted outside those business hours.
- 30.7 Notwithstanding anything to the contrary in this clause 27, a written notice or other communication actually received by any Party shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 30.8 Any Party may by written notice to the other Parties change its address, or email address for the purposes of clause 27 to any other address (other than in the case of the physical address to a post office box number) provided that the change shall become effective on the 5th (fifth) day after the receipt of the notice.

31. **THE AGENT**

Unless explicitly stated otherwise, if and when the Agent takes any action or exercises any right in terms of this Trust Deed it does so as the duly appointed agent of the Founders.

32. **THE CLAIMANTS' AGENT**

- 32.1 The position of Claimants' Agent shall be an admitted attorney to the High Court of South Africa to represent the interests of the Claimants in terms of this Trust Deed.
- 32.2 The Claimants' Attorneys have appointed Richard Spoor as the Claimants' Agent.
- 32.3 Any appointment, removal or replacement referred to in clause 32.1 shall be effected by way of written notice given to the Trustees and the Agent, and shall take effect upon receipt by the Trustees and the Agent of the notice.

- 32.4 The Claimant's Agent may be terminated for cause by the Claimants' Attorneys.
- 32.5 In the event of a removal, resignation or replacement, the Claimants' Attorneys shall appoint a replacement Claimants' Agent.
- 32.6 In the event that the Claimants' Attorneys are unable to agree to a replacement Claimants' Agent, Richard Spoor shall appoint the Claimants' Agent. If Richard Spoor does not appoint the Claimants' Agent, then Charles Abrahams shall do so and if he does not do so, the LRC shall appoint the Claimants' Agent.
- 32.7 Unless explicitly stated otherwise, if and when the Claimants' Agent takes any action or exercises any right in terms of this Trust Deed, it does so as the duly appointed agent of the Claimants' Attorneys, representing the interests of the Claimants.
- 32.8 The Claimants' Attorneys choose the following address and email address for the purposes of communicating with the Claimants' Agent, and the provisions of clause 27 shall apply mutatis mutandis:
- 5 Sherborne Road
Parktown, Johannesburg
2196
Email address: richard@richardspoorinc.co.za
Marked for the attention of Richard Spoor
- 32.9 The Claimants' Agent shall only be entitled to exercise his rights in terms of this Trust Deed if he, simultaneously with the exercise thereof, agrees to be bound by the provisions of this Trust Deed insofar as they relate to him.
- 32.10 The Claimants' Agent shall be entitled to be paid for discharging its duties in terms of this Trust Deed, and such fees shall be equivalent to the fees payable to each of the Trustees referred to in clause 14.3.5 (Trustees appointed by Claimants' Attorneys), and where there is a disparity in the fees paid to each such Trustee, to the lower of the two.

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
K2018259017 (SOUTH AFRICA) PROPRIETARY LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
AFRICAN RAINBOW MINERALS LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
ANGLO AMERICAN SOUTH AFRICA LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
ANGLOGOLD ASHANTI LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
GOLD FIELDS OPERATIONS LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
GFI JOINT VENTURE HOLDINGS PROPRIETARY LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

-
-

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
HARMONY GOLD MINING COMPANY LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
SIBANYE GOLD LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
RICHARD SPOOR INC. ATTORNEYS

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
ABRAHAMS KIEWITZ INCORPORATED

Signatory:
Capacity:

Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of

LEGAL RESOURCES CENTRE

Signatory:

Capacity:

Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of

MOTLEY RICE LLC

Signatory:

Capacity:

Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of

HAUSFELD LLP

Signatory:

Capacity:

Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

Abraham Joseph van Vuuren

Signatory:
Identity Number:

SIGNED at _____ on this the _____ day of _____ 20__.

Kgomotso Mmathuto Molebatsi

Signatory:
Identity Number:

SIGNED at _____ on this the _____ day of _____ 20__.

Michael Edward Courtney Murray

Signatory:
Identity Number:

SIGNED at _____ on this the _____ day of _____ 20__.

Janet Yetta Love

Signatory:
Identity Number:

SIGNED at _____ on this the _____ day of _____ 20__.

Sophia Kisting

Signatory:
Identity Number:

SCHEDULE A

FOUNDERS

The following Persons are the Founders of the Trust:

- (1) **African Rainbow Minerals Limited**, a company registered in accordance with the laws of South Africa under registration number 1933/004580/06;
- (2) **Anglo American South Africa Limited**, a company registered in accordance with the laws of South Africa under registration number 1917/005309/06;
- (3) **AngloGold Ashanti Limited**, a company registered in accordance with the laws of South Africa under registration number 1944/017354/06;
- (4) **South Deep Joint Venture**, an unincorporated joint venture established pursuant to a joint venture agreement entered into on 31 March 1999 (and as amended from time to time) between Gold Fields Operations Limited, a company registered in accordance with the laws of South Africa under registration number 1959/003209/06 and GFI Joint Venture Holdings Proprietary Limited, a company registered in accordance with the laws of South Africa under registration number 1959/003209/06;
- (5) **Harmony Gold Mining Company Limited**, a company registered in accordance with the laws of South Africa under registration number 1950/038232/06; and
- (6) **Sibanye Gold Limited (previously known as GFI Mining South Africa Proprietary Limited)**, a company registered in accordance with the laws of South Africa under registration number 2002/031431/06

SCHEDULE B

INITIAL TRUSTEES

1. Abraham Joseph van Vuuren
2. Kgomo^tso Mmathuto Molebatsi
3. Michael Edward Courtney Murray
4. Janet Yetta Love
5. Sophia Kisting

SCHEDULE C

CLAIMANTS' ATTORNEYS

The following Persons are the Claimants' Attorneys:

the South African based law firms:

- (1) **Richard Spoor Inc. Attorneys**, a company registered in accordance with the laws of South Africa under registration number 2011/011048/21;
- (2) **Abrahams Kiewitz Incorporated**, a company registered in accordance with the laws of South Africa under registration number 2012/086658/21;
- (3) **Legal Resources Centre**, a law clinic registered with the Law Society of the Northern Provinces and a non-profit organisation registered in accordance with the laws of South Africa with NPO number 023-004;

and the consulting law firms:

- (4) **Motley Rice LLC**, a company registered in accordance with the laws of South Carolina, United States of America under registration number 75-3051732; and
- (5) **Hausfeld LLP**, a limited liability partnership registered in accordance with the laws of the District of Columbia under initial file number 28181.

SCHEDULE D

LIST OF “Q(H)UBEKA CLAIMANTS” (WHOSE CLAIMS AGAINST ANGLO AMERICAN SOUTH AFRICA LIMITED AND ANGLOGOLD ASHANTI LIMITED WERE SETTLED ON 4 MARCH 2016)

AND

LIST OF “BLOM CLAIMANTS” (WHOSE CLAIMS AGAINST ANGLO AMERICAN SOUTH AFRICA LIMITED WERE SETTLED ON 19 SEPTEMBER 2013)

For purposes of this Schedule D:

- (1) **Anglo American Litigation** means the claims instituted in the High Court against Anglo American which were submitted to arbitration under the Anglo American Arbitration Agreement;
- (2) **AngloGold Litigation** means the claims instituted in the High Court against AngloGold which were submitted to arbitration under the AngloGold Arbitration Agreement;
- (3) **Higa** means Fanna Lennox Higa; and
- (4) **Withdrawing Litigants** means the persons listed in Table B below.

The list of Q(h)ubeka Claimants shall be the names listed in Table A of this Schedule D, and also any other persons identified as plaintiffs in the Anglo American Litigation and the AngloGold Litigation who are not identified in Table A of this Schedule D, with the exception only of Higa and the Withdrawing Litigants.

The list of Blom Claimants shall be the names listed in Table C below.

Table A

Attached hereto

Table B

Item no	Name and Surname
1.	Malefetsane Mohlakasi
2.	Mona Melao
3.	Motlalepula Phetane
4.	Ntjana Ntjana
5.	Mahola Selibo
6.	Tshehla Solomon Hlalele
7.	Malepa Puso
8.	Zamukulungisa Dyantyi
9.	Sekhobe Letsie

Table C

Item no	Name & Surname:
1.	Alpheus Zonisile Blom
2.	Vuyisile Bunge
3.	Mongesi Hempe
4.	Mziwamadoda John Kobe
5.	Lefu Lemoana
6.	Pitso Lilochane
7.	Wilson Ntabene Mafolwana
8.	Zwvelinzima Makaka
9.	Tsidiso Mkhanya
10.	Peete Alphone Moshoeshe
11.	Tseliso Motlatsi
12.	Thobeka Rejoice Ngidi
13.	Motlalepula Sejake
14.	Petros Khasu Thube
15.	Letuka Michael Pebane
16.	Mosekeseke Samuel Motaung
17.	Letia Isabela Mabela
18.	Calesia Ngidi
19.	Nozinja Victoria Mtoto

20.	Matumo Bernice Kesi
21.	Mathabiso Namane
22.	Nonezile Njani
23.	Mathuso Nkete
24.	Mapokane Semakale

SCHEDULE E

FORM OF RELEASE BY CLAIMANTS IN THE SILICOSIS CLASS ACTION

PLEASE READ CAREFULLY – THIS AFFECTS YOUR LEGAL RIGHTS

DETAILS OF SETTLING CLAIMANT (INCLUDING DEPENDENT CLAIMANTS)

I, the undersigned,

<i>Insert Full Name:</i>	
--------------------------	--

(Fill out 1 (one) of the following, as applicable:)

With South African Identity Number:	
With Passport number:	<i>(insert country of issue)</i>
With employee/industry number:	
Contact number	
Physical address	

am submitting a claim to the Tshiamiso Trust:

(tick one of the following)

1.	In my own right as a gold mineworker engaged in Risk Work	
2.	As a dependent of a deceased gold mineworker engaged in Risk Work	
3.	As the executor of the estate of a deceased gold mineworker engaged in Risk Work	
4.	As the parent and/or guardian of a minor dependent of a deceased gold mineworker engaged in Risk Work	

RELEASE OF LIABILITY EXCEPT IN TERMS OF THE TRUST DEED

1. I acknowledge that I am bound by the settlement and terms set out in the Tshiamiso Trust Deed (the **Trust Deed**), the underlying settlement agreement (the **Settlement Agreement**) which contemplated the establishment of the Tshiamiso Trust (the **Trust**), and the judgement certifying the class of Settling Claimants under case number:[**INSERT CASE NUMBER**].
2. I also acknowledge, for good measure, that I have no claim against the Trust, its employees and third party contractors, or its trustees (the **Trustees**), except as expressly set out in the Trust Deed.
3. I also acknowledge that I have no claim or recourse of whatsoever nature against any of parties to the Settlement Agreement or the Claimants' Agent (as defined in the Trust Deed) arising from the terms of the Trust Deed or any failure by the Trustees to comply with the terms of the Trust Deed or to conduct the affairs of the Trust in the manner required of them.

CONSENT TO THE COLLECTION AND STORAGE OF PERSONAL INFORMATION

4. I understand and agree that the Tshiamiso Trust and its nominees may be required to collect and process personally identifiable information, including (without limitation) my special personal information (as defined in the Protection of Personal Information Act, 2013), and that personal information may, from time to time, be shared with certain persons in terms of the Trust Deed and the Settlement Agreement (including, without limitation, to and between, the parties to the Settlement Agreement, and their Affiliates, as defined in the Trust deed) and such information may in appropriate circumstances reside outside of South Africa. I understand and agree that the Tshiamiso Trust and its nominees shall be entitled to transfer my personal information to such locations outside of South Africa, and use my personal information in such locations.
5. I understand and agree that the Tshiamiso Trust and its nominees may be required to use, disclose to and collect from industry databases, credit bureaus and other databases, including (without limitation) the databases of the Medical Bureau for Occupational Diseases (MBOD), the Compensation Commission for Occupational Diseases (CCOD), previous employers and/or pension or provident funds, personally identifiable information about me (including, without limitation, medical information and other special personal information, as defined in the Protection of Personal Information Act, 2013), and disclose that information to the parties to the Settlement

Agreement, and I hereby authorise any person whom the Trustees or their nominees contact in this regard to provide such information to them.

6. I understand and agree that Tshiamiso Trust and its nominees may be required to compile and disclose to any party to the Class Action Litigation my personal contact details which may be required pursuant to an order of court or for discovery in such proceedings.
7. I understand and agree that the Tshiamiso Trust and its nominees (including, without limitation, the Trust's Claims Lodgement Officer) may collect and process my personally identifiable information, including (without limitation) biometric data.

IF YOU ARE 18 YEARS OR OLDER:

I am 18 years or older. **I understand the legal consequences of signing this document.** I understand that this document is written to be as broad and inclusive as legally permitted by the laws of South Africa. I agree that if any portion is held invalid or unenforceable, I will continue to be bound by the remaining terms. I have read this document, and I am signing it freely. No other representations concerning the legal effect of this document have been made to me.

Signature of Settling Claimant

IF THE SETTLING CLAIMANT IS UNDER 18 YEARS OF AGE:

I am the parent and/or legal guardian of the Settling Claimant. **I understand the legal consequences of signing this document on behalf of the Settling Claimant.** I understand that this document is written to be as broad and inclusive as legally permitted by the laws of South Africa. I agree that if any portion is held invalid or unenforceable, I (and the Settling Claimant) will continue to be bound by the remaining terms. I have read this document, and I am signing it freely. No other representations concerning the legal effect of this document have been made to me.

Signature of parent/guardian of Settling Claimant

SCHEDULE F

QUALIFYING MINES AND QUALIFYING PERIODS IN RESPECT TO QUALIFYING MINES

This schedule of Qualifying Mines and Qualifying Periods has been compiled for purposes of concluding the Settlement Agreement and this Trust Deed without admission of liability by any of the Founders. This schedule is solely for purposes of determining the Contributions due by each Founder in terms of this Trust Deed and nothing in this schedule constitutes an admission of liability for any other purpose either in relation to the Parties to this Trust Deed, the Parties to the Settlement Agreement or any other party. This schedule does not constitute an admission by any of the Founders that they owned, operated, controlled or were in any way responsible for any of the Qualifying Mines during any of the Qualifying Periods and neither the Parties to this Trust Deed, the Parties to the Settlement Agreement or any other party may rely on this schedule for purposes of instituting any claims against any of the Founders or for any other reason.

Founder and Qualifying Period	Anglo American South Africa Limited		AngloGold Ashanti Limited		African Rainbow Minerals Limited		Harmony Gold Mining Company Limited	
	Start	End	Start	End	Start	End	Start	End
SA Land	12-Mar-1965	31-Dec-1976						
Daggafontein	12-Mar-1965	31-Dec-1967						
East Daggafontein	12-Mar-1965	31-Dec-1976						
Elandsrand only (not including Deelkraal).	01-Jan-1978	31-Dec-1997						
Elandsrand and Deelkraal (also called Elandskraal). To Kusasaletu			01-Jan-1998	08-Apr-2001			09-Apr-2001	Termination Date ¹
Western Holdings (including Welkom, Saaiplaas) . To Free State Cons, <i>split as below</i> in 1997	12-Mar-1965	31-Mar-1997						
Western Holdings (1,2,3,4,6,7) (Welkom mines, to ARMGold)	01-Apr-1997	31-Dec-1997	01-Jan-1998	27-Jan-1998			28-Jan-1998	Shafts 2-7: 30-Jun-2004 Shaff 1: 30-Jun-2005

¹ Termination date as defined in the Trust Deed

Founder and Qualifying Period	Anglo American South Africa Limited		AngloGold Ashanti Limited		African Rainbow Minerals Limited		Harmony Gold Mining Company Limited	
	Start	End	Start	End	Start	End	Start	End
Matjhabeng (Western Holdings other 4 shafts Kudu, Nyala, Sable, Eland which were former Freddie's and Free State Geduld shafts)	01-Apr-1997	31-Dec-1997	01-Jan-1998	31-Dec-2001			01-Jan-2002	Nyala: 31-Mar-2005 Others: 30-Jun-2005
Saaiplaas 2,3							01-Apr-1997	30-Jun-2004
Saaiplaas 4,5 (Masimong) (FreeGold 3)	01-Apr-1997	31-Dec-1997	01-Jan-1998	19-Sep-1998			20-Sep-1998	Termination Date ²
Free State Geduld (including Freddie's). To Free State Cons, FreeGold 2 and 4), split as below	12-Mar-1965	31-Dec-1997						
Freddie's 7 and 9 (to Kades Barnea cc, Pamodzi, now part of Target mine)			01-Jan-1998	02-Apr-1998			18-Feb-2010	Termination Date
Freegold 2, 4 (Tshepong, Phakisa, which were former Freddie's and Free State Geduld shafts)			01-Jan-1998	31-Dec-2001			01-Jan-2002	Termination Date
President Brand (to Steyn in 1996, then Free State Cons, FreeGold 1) see below	12-Mar-1965	31-Dec-1997						
President Steyn (to Free State Cons, FreeGold 1), split as below	12-Mar-1965	31-Dec-1997						
Steyn 1,2 (to Kades Barnea cc, Pamodzi, then Bambanani)			01-Jan-1998	02-Apr-1998			18-Feb-2010	Termination Date

² Termination date as defined in the Trust Deed

Founder and Qualifying Period	Anglo American South Africa Limited		AngloGold Ashanti Limited		African Rainbow Minerals Limited		Harmony Gold Mining Company Limited	
	Start	End	Start	End	Start	End	Start	End
Steyn 3,4 (FreeGold 1, then Bambanani)			01-Jan-1998	31-Dec-2001			01-Jan-2002	Termination Date
Brand 1, 2, 3, 5 (Steyn 5 to 8)			01-Jan-1998	30-Apr-1998			01-May-1998	Shaft 2: 31-Mar-2002 Shaft 1,3: 30-Jun-2010 Shaft 5: 30-Jun-2005
HJ Joel / Joel			01-Jan-1998	31-Dec-2001			01-Jan-2002	Termination Date ³
Western Reefs (merged with Vaal Reefs)	25% from 12-Mar-1965	25% to 31-Dec-1971	75% from 12-Mar-1965	75% to 31-Dec-1971				
Vaal Reefs (all shafts - <i>split in 1998 as below</i>)	25% from 12-Mar-1965	25% to 31-Dec-1997	75% from 12-Mar-1965	75% to 31-Dec-1997				
Vaal Reefs (1,3,4,5,6,7) (Orkney mines to ARMGold)			01-Jan-1998	31-Jul-1998			01-Aug-1998	27-Feb-2008
Vaal Reefs 2 (Orkney mines to ARMGold)			01-Jan-1998	30-Jun-2001			01-Jul-2001	27-Feb-2008
Vaal Reefs 8 (Great Nologwa)			01-Jan-1998	28-Feb-2018			01-Mar-2018	Termination Date
Vaal Reefs 9 (Kopanang)			01-Jan-1998	28-Feb-2018				
Vaal Reefs 10 (Tau Lekoa)			01-Jan-1998	01-Aug-2010				
Vaal Reefs 11 (Moab Khotsong)			01-Jan-1998	28-Feb-2018			01-Mar-2018	Termination Date
Western Deep Levels (renamed in 1998 as below)	12-Mar-1965	31-Dec-1997						
Mponeng (South Mine WDL 1)			01-Jan-1998	Termination Date				
Tau Tona (East Mine WDL 3)			01-Jan-1998	31-Oct-2017				

³ Termination date as defined in the Trust Deed

Founder and Qualifying Period	Anglo American South Africa Limited		AngloGold Ashanti Limited		African Rainbow Minerals Limited		Harmony Gold Mining Company Limited	
	Start	End	Start	End	Start	End	Start	End
Savuka (West Mine WDL 2)			01-Jan-1998	31-Oct-2017				
St Helena							31-Oct-2002	Shaft 2: 31-Dec-2003 Others: 30-Jun-2008
Evander (including Kinross, Leslie, Bracken and Winkelhaak mines)							01-Sep-1998	28-Feb-2013
Randfontein Estates (incl Doornkop, Cooke), split as follows								
Doornkop							01-Mar-2000	Termination Date ⁴
Cooke 1, 2 and 3 (Rand Uranium)							01-Mar-2000	21-Nov-2008
Cooke 4 (Ezulwini)							01-Mar-2000	29-Dec-2006
Unisel							09-Sep-1996	Termination Date
Harmony mine							12-Mar-1965	Shaft 4: 30-Sep-2002 Others: 30-Jun-2010
Merriespruit							01-Jun-1973	Shaft 3: 14-Apr-2010 Shaft 1: 31-Dec-2010
Hartebeesfontein					12-Mar-1965	24-Aug-1999		
Loraine (Shafts 1,2 and 3) split in 1998 as below					12-Mar-1965	19-Feb-1998		

⁴ Termination date as defined in the Trust Deed

Founder and Qualifying Period	Anglo American South Africa Limited		AngloGold Ashanti Limited		African Rainbow Minerals Limited		Harmony Gold Mining Company Limited	
	Start	End	Start	End	Start	End	Start	End
Lorraine 3 (sold 20 Feb 1998 to Kades Barnea, Pamodzi). Renamed Target 3							18-Feb-2010	Termination Date
Lorraine 1&2 (part of AvGold, renamed Target 1&2)					20-Feb-1998	10-May-2004	11-May-2004	Termination Date ⁵
Zandpan					12-Mar-1965	30-Jun-1972		
Virginia mine					12-Mar-1965	17-Jun-1973	18-Jun-1973	30-Jun-2003
Village Main Reef					1-July-1967	31-Dec-1995		

⁵ Termination date as defined in the Trust Deed

Founder and Qualifying Period	South Deep Joint Venture		Sibanye Gold Limited	
	Start	End	Start	End
St Helena	12-Mar-1965	30-Oct-2002		
Western Areas (to South Deep)	12-Mar-1965	31-Mar-1999		
South Deep	01-Apr-1999	Termination Date ⁶		
Evander (including Kinross, Leslie, Bracken and Winkelhaak mines)	01-Jan-1998	31-Aug-1998		
Randfontein Estates (incl Doornkop, Cooke), split as follows				
Doornkop				
Cooke 1, 2 and 3 (Rand Uranium)			01-May-2014	31-Oct-2017
Cooke 4 (Ezulwini)			01-May-2014	31-Dec-2016
Beatrix (including Oryx)			01-Jan-1985	Termination Date
Oryx (to Beatrix)			01-Jan-1993	01-Jul-1999
Driefontein (including East Driefontein, West Driefontein and Driefontein Cons)			12-Mar-1965	Termination Date
Kloof (including Leeudoorn from 1 Jan 1993, Libanon and Venterspos)			12-Mar-1965	Termination Date
St Helena (Beisa section)			01-Jul-1983	30-Nov-1984

⁶ Termination date as defined in the Trust Deed

SCHEDULE G

ACTUARIAL DETERMINATION PRINCIPLES AND PROCEDURES

1. GENERAL PRINCIPLES

- 1.1 Contributions for each Founder will essentially be determined on a one-year forward looking basis, with it not being necessary to accumulate solvency reserves given the security provided by the Founders in terms of the Settlement Agreement, read with clause 28.5 of the Trust Deed.
- 1.2 The Benefit Contributions of the Founders for the first two years, and the Trust Administration Contributions of the Founders for the first year, have been determined and are specified in the Trust Deed.
- 1.3 The Trust will maintain a separate notional Benefit Account and Administration Expense Account for each Founder for the duration of the Trust.
- 1.4 The sum of the notional accounts of all the Founders should correspond closely to the net asset value of the Trust (cash and investments less current liabilities plus current assets) at each financial year-end of the Trust.
- 1.5 Every Benefit paid or payable by the Trust, after the Benefit Modifiers have been applied, will be apportioned to the Founders according to the years of Risk Work of the Eligible Claimant within Qualifying Periods at Qualifying Mines of each Founder (as set out in Schedule F) as a proportion of the total years of Risk Work of the Eligible Claimant within Qualifying Periods at Qualifying mines of all the Founders.

2. BENEFIT CONTRIBUTIONS

- 2.1 The Benefit Contributions for all the Founders for the first two years (defined in the Trust Deed as the Initial Benefit Contribution) is R1 420 000 000, which will be apportioned per Founder as set out in the Trust Deed.
- 2.2 Benefits paid or payable to Eligible Claimants (after applying Benefit Modifiers) will be apportioned between the Founders according to the Eligible Claimants' years of Risk Work during a Qualifying Period at a Qualifying Mine of each Founder as set out in Schedule F, as a proportion of the Eligible Claimants' total years of Risk Work during a Qualifying Period at a Qualifying Mine for all the Founders ("Attributed Benefit Payments"). In the case of a Dependent Claimant, reference to "Eligible Claimant" shall be construed as a reference to the Deceased Individual for purpose of this paragraph.

- 2.3 For each Founder a notional Benefit Account has to be accumulated, starting with the Initial Benefit Contributions received from the Founder, deducting that Founder's Attributed Benefit Payments, and adding investment returns earned on the Benefit Account (net of tax and investment costs).
- 2.4 The accumulation is to be done at monthly intervals.
- 2.5 Prior to the end of each Annual Period (not less than 120 days), the Trust (in consultation with the Financial Consultant) has to estimate the balance in each Founder's Benefit Account, allowing for:
- 2.5.1 The balance in the Founder's Benefit Account at the most recent month-end;
- 2.5.2 Expected Attributed Benefit Payments that will be paid or become payable after the month-end in 2.5.1 above, to the end of the Annual Period. This should include allowance for in-process claims, estimating the proportion of in-process claims that would become qualifying claims (per disease class) and estimating the proportion of these that may be allocated to the Founder (based on past experience);
- 2.5.3 Expected Benefit Contributions that would be paid by the Founder after the month-end in 2.5.1 above, to the end of the Annual Period;
- 2.5.4 Investment returns expected to be earned on the Benefit Account (net of tax and investment costs) until the end of the Annual Period.
- 2.6 Prior to each year-end (the Trust Deed provides for not less than 120 days prior to the commencement of each Annual Period), starting at the end of year 2, the Trust (in consultation with the Financial Consultant) has to estimate the expected claims for the following Annual Period, per Founder. The following should be considered:
- 2.6.1 The number of Settling Claimants that would be traced in the next year⁷;
- 2.6.2 The claim rate (proportion of the Settling Claimants that are expected to be Eligible Claimants) per disease and severity class⁸;

⁷ In practice this can be judged if tracing is done systematically and comprehensively per defined geographic area. The surviving ex-miner pool in each region can be estimated upfront (for instance from the Ehrlich paper done on the TEBA data). Based on the geographic areas expected to be covered in the following year, the proportion traced can be estimated (for example if the Eastern Cape is estimated to house 30% of the surviving ex-miner population and 50% of this area will be dealt with in the planned tracing program for the following year, $30\% \times 50\% = 15\%$ of the tracing will be done). A similar estimate can be done in respect of qualifying dependents.

⁸ This can be judged from the qualifying claims submitted in previous years, relative to the total number of potential claimants traced. Allowance would need to be made for possible differences between previous experience and the following year's expected experience.

- 2.6.3 The benefit level for the following year (per disease and severity class), allowing for inflation as applicable;
- 2.6.4 The average Benefit Modifier as set out in the Trust Deed (typically adjusting for non-qualifying gold mining service);
- 2.6.5 The proportion of Benefits expected to be allocated to the Founder, which may differ per disease class, based on past experience, allowing for possible differences between past experience and the following year's anticipated experience;

resulting in an estimate of the Attributed Benefit Payments for each Founder for the next Annual Period.

2.7 The Trust (in consultation with the Financial Consultant) has to decide on a Benefit Account Margin (as a percentage, the maximum of which is 30%) to allow for uncertainty in the estimate of the expected claims in 2.6 above. This Benefit Account Margin may differ per Founder.

2.8 The required Benefit Contribution for each Founder (for the next Annual Period) is to be calculated so that:

- 2.8.1 the Benefit Account value at the start of the year (determined in 2.5 above);
- 2.8.2 plus the projected Benefit Contribution for the following year;
- 2.8.3 less estimated Attributed Benefit Payments for the following year (from 2.6 above);
- 2.8.4 plus projected net investment returns earned on the Benefit Account for the year,

would be equal to a minimum of the Founder's Attributed Benefit Payments for the following year (from 2.6 above) with allowance for the Benefit Account Margin (from 2.7 above).

2.9 It is possible that the required Benefit Contribution for a Founder could be zero (in the event that the Benefit Account value at the start of the year is projected to be sufficient to provide the minimum required year-end balance in the Benefit Account).

2.10 Where a Founder elects to contribute a higher amount than the required Benefit Contribution (including contributions in terms of clauses 8.6.8, 29.2 and 29.5 of the Trust Deed), such additional contribution would be allocated to that Founder's Benefit Account and accumulated in the same way as the required Benefit Contribution.

3. **TRUST ADMINISTRATION EXPENSE CONTRIBUTIONS**

3.1 The Trust will receive a R5 million start-up contribution, which will be apportioned per Founder as set out in the Trust Deed.

- 3.2 The start-up expenses of the Trust will be apportioned per Founder in the same way as the start-up contributions.
- 3.3 The Trust Administration Contributions for the first year is R100 million, which will be apportioned per Founder as set out in the Trust Deed.
- 3.4 The Trust's expense for the first year will be apportioned per Founder in the same way as the Initial Benefit Contribution (as set out in the Trust Deed).
- 3.5 For each Founder a notional Administration Expense Account has to be accumulated, starting with any unused Start-Up Contribution, adding the Trust Administration Contributions received from the Founder, deducting that Founder's share of expenses paid and adding investment returns earned on the Founder's Administration Expense Account (net of tax and investment costs).
- 3.6 The accumulation is to be done at monthly intervals.
- 3.7 Prior to the end of each Annual Period (not less than 120 days), the Trust (in consultation with the Financial Consultant) has to estimate the balance in each Founder's Administration Expense Account at the end of that Annual Period, allowing for:
- 3.7.1 The balance in the Founder's Administration Expense Account at the most recent month-end;
- 3.7.2 Expected trust expenses that will be paid or become payable after the month-end in 3.7.1 above, to the end of that Annual Period, allocated per Founder in the same proportion as applicable at the start of that Annual Period;
- 3.7.3 Expected Trust Administration Contributions that would be paid by the Founder after the month-end in 3.7.1 above, to the end of that Annual Period;
- 3.7.4 Investment returns expected to be earned on the Administration Expense Account (net of tax and investment costs) until the end of that Annual Period.
- 3.8 Prior to the end of each Annual Period (not less than 120 days), starting at the end of year 1, the Trust (in consultation with the Financial Consultant) has to provide an expense budget for the following Annual Period.
- 3.9 The expense budget in 3.8 above, will be allocated to each Founder in such a way that the cumulative expenses to be allocated to each Founder from the Effective Date to the end of the following Annual Period, will be the same proportion of total Trust expenses, as that Founder's cumulative Attributed Benefit Payments (from the Effective Date to the end of the

following Annual Period) as a proportion of total Benefit payments (across all Founders over the corresponding period), as follows:

- 3.9.1 Calculate the sum of the Attributed Benefit Payments for each Founder from the Effective Date to the end of the next Annual Period (including the actual and expected payments to the end of the next Annual Period as described in 2.2, 2.5.2 and 2.6);
- 3.9.2 Calculate each Founder's proportion of the total cumulative Benefit payments across all Founders, (as described in 3.9.1) to determine the Founder's "Cumulative Benefit Proportion";
- 3.9.3 Determine the total Trust administration expenses since the Effective Date across all Founders (including actual and expected expenses to the end of the next Annual Period as described in 3.7.2 and 3.8 above);
- 3.9.4 Calculate each Founder's Cumulative Attributed Expenses by applying that Founder's Cumulative Benefit Proportion to the cumulative Trust expenses as described in 3.9.3. This represents the cumulative expenses that should be allocated to that Founder until the end of the next Annual Period;
- 3.9.5 Deduct the sum of actual expenses allocated to each Founder's Administration Expense Account since the Effective Date (including expected expenses to the end of this Annual period as described in 3.7.2) from the Cumulative Attributed Expenses of that Founder ("Attributed Expenses" for that Founder for the next Annual Period);
- 3.9.6 The Cumulative Benefit Proportion calculated in 3.9.2 above, shall be used to allocate expenses between the Founders for the next Annual Period.
- 3.10 The Trust (in consultation with the Financial Consultant) has to decide on an Expense Account Margin (as a percentage, the maximum of which is 30%) to allow for uncertainty in the estimate of the expected expenses in 3.8 above. This Expense Account Margin may differ per Founder.
- 3.11 The required Trust Administration Contribution for each Founder (for the next Annual Period) is to be calculated so that:
 - 3.11.1 the Administration Expense Account value at the start of the year (determined in 3.7 above);
 - 3.11.2 plus the projected Trust Administration Contribution for the following year;
 - 3.11.3 less estimated Attributed Expenses for the following year (from 3.9.5 above);
 - 3.11.4 plus projected net investment returns earned on the Administration Expense Account for the year,

would be equal to a minimum of the Founder's Attributed Expenses for the following year (from 3.9.5 above) with allowance for the Expense Account Margin (from 3.10 above).

- 3.12 The total of the Trust Administration Contributions to the Trust (across all Founders and all years) is subject to a maximum of R845 million (including the start-up contribution).
- 3.13 It is possible that the required Trust Administration Contributions for a Founder could be zero (in the event that the Administration Expense Account value at the start of the year is projected to be sufficient to provide the minimum required year-end balance in the Administration Expense Account).
- 3.14 Where a Founder elects to contribute a higher amount than the required Trust Administration Contribution (including contributions in terms of Clauses 8.4.11, 29.2 and 29.5 of the Trust Deed), such additional contribution would be allocated to that Founder's Administration Expense Account and accumulated in the same way as the required Trust Administration Contribution.

SCHEDULE H

STANDARDS AND PRINCIPLES FOR THE DIAGNOSIS AND CERTIFICATION OF QUALIFYING DISEASES

All definitions used in this schedule which are not defined herein, shall have the meanings ascribed to them in the Trust Deed to which this schedule is attached.

1. STANDARDS

The following standards and principles will apply to the benefit medical examinations (**BMEs**) and certification of Qualifying Diseases:

- 1.1 Radiological methods and the grading of radiological changes in Silicosis shall be in accordance with the International Labour Organization (ILO) Classification of Radiographs of Pneumoconiosis (Geneva, 2011).
- 1.2 Reference values for lung function tests shall be those of the European Convention for Construction Steelworks as set out in Quanger, Ph.H. (Ed). Report of the Working Party on standardization of Lung Function Tests. European Community for Coal and Steel. Bull European Plethysmography Respo. 1983 (suppl.5): 7-95. The adjustments in paragraph 4.4 of the "Guidance note for occupational medical practitioners: lung function testing" as published by the Department: Minerals and Energy in September 2003, shall be applied to the reference values for lung function tests.
- 1.3 The quality and adequacy of lung function tests and their interpretation shall be evaluated in accordance to the standards laid down by the American Thoracic Society.
- 1.4 The Trustees shall in their discretion (acting reasonably) and in accordance with generally-accepted standards of good medical practice determine the format, extent and quality of BMEs and associated medical reports, provided that in exercising such discretion the Trustees shall not derogate in any way from the standards and principles set out in this Schedule H.
- 1.5 The post-mortem removal, transportation, examination and preservation of cardio-respiratory organs of deceased mineworkers that were exposed to crystalline silica dust shall be done substantially in accordance with the Guidelines of the National Institute for Occupational Health.
- 1.6 The diagnosis of Tuberculosis shall be made on clinical, radiological, laboratory and pathological evidence in accordance with the National Guidelines for the Management of Tuberculosis in Adults as published by the Department of Health (2014).

2. PRINCIPLES FOR THE DIAGNOSIS AND CERTIFICATION OF SILICOSIS IN LIVING CLAIMANTS

- 2.1 Diagnosis of Silicosis

The diagnosis of Silicosis shall be based on:

- 2.1.1 exposure to crystalline silica dust (in a mining environment); and
- 2.1.2 a radiological finding of ILO 1/1 or greater.

2.2 Assessment of Cardio-Respiratory Impairment associated with Silicosis

2.2.1 The degree of impairment associated with Silicosis shall be assessed in accordance with the following:

Cardio-Respiratory Impairment	Silicosis Class 1	Silicosis Class 2	Silicosis Class 3
Spirometry: FVC & FEV ₁	FVC greater than 65% of predicted or FEV ₁ greater than 65% of predicted or FEV ₁ /FVC greater than 65% of predicted	FVC 65%-52% of predicted or FEV ₁ 65%-52% of predicted or FEV ₁ /FVC 65%-55% of predicted	FVC less than 52% of predicted or FEV ₁ less than 52% of predicted or FEV ₁ /FVC less than 55% of predicted

2.2.2 If any one of the spirometric measurements (FVC, FEV₁ or FEV₁/FVC) indicates that the Claimant should fall within a class which is more impaired, notwithstanding the fact that the other readings may indicate that the Claimant falls within a less impaired class, the Claimant shall be classified as falling within the more impaired class.

3. **PRINCIPLES FOR THE AUTOPSY (POST-MORTEM) DIAGNOSIS AND CERTIFICATION OF SILICOSIS**

3.1 Forms of Silicosis

3.1.1 At autopsy Silicosis occurs in two forms, namely:

3.1.1.1 Alveolar proteinosis, or

3.1.1.2 Nodular silicosis-concentric fibrosis in the lung parenchyma (islets), pleura (plaques) and intra-pulmonary lymphnodes.

3.1.2 Palpable nodules are categorized as follows:

3.1.2.1 Occasional (1 to 4);

- 3.1.2.2 Few (5 to 14);
- 3.1.2.3 Moderate (15 to 30);
- 3.1.2.4 Large number (greater than 30); or
- 3.1.2.5 Massive fibrosis-confluent silicotic islets forming a focus of fibrosis 2cm or more in diameter.

3.2 Certification of Autopsy Silicosis

- 3.2.1 Silicosis at autopsy shall be certified in accordance with the following:
 - 3.2.1.1 Silicosis Class 1: Occasional or few islets or massive fibrosis where the sum of the lesions is less than 5cm.
 - 3.2.1.2 Silicosis Class 2: Moderate or large number of islets or massive fibrosis where the sum of the lesions is more than 5cm.
 - 3.2.1.3 Silicosis Class 3: Alveolar proteinosis
- 3.2.2 Silicosis shall be diagnosed as the primary cause of death only if it is specifically indicated as the cause of death in an autopsy report or on an official death certificate.

4. **PRINCIPLES FOR THE DIAGNOSIS AND CERTIFICATION OF TUBERCULOSIS IN LIVING CLAIMANTS**

4.1 Diagnosis of Tuberculosis

The diagnosis of Tuberculosis shall be made on clinical, radiological, laboratory and pathological evidence in accordance with the National Guidelines for the Management of Tuberculosis in Adults as published by the Department of Health (2014).

4.2 Assessment of Cardio-Respiratory Impairment associated with Tuberculosis

- 4.2.1 The assessment of the late or permanent effects (impairment) of cardio-respiratory Tuberculosis shall be done at least 12 (twelve) months, and at most 18 (eighteen) months, after completion of chemotherapy for Tuberculosis.
- 4.2.2 The degree of impairment associated with cardio-respiratory Tuberculosis shall be assessed in accordance with the following:

Cardio-respiratory impairment	First Degree Tuberculosis	Second Degree Tuberculosis
Spirometry: FVC and FEV ₁	FVC 65%-52% of predicted	FVC less than 52% of predicted

	or FEV ₁ 65%-52% of predicted or FEV ₁ /FVC 65%-55% of predicted	or FEV ₁ less than 52% of predicted or FEV ₁ /FVC less than 55% of predicted
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4.2.3 If any one of the spirometric measurements (FVC, FEV1 or FEV1/FVC) indicates that the Claimant should fall within a class which is more impaired, notwithstanding the fact that the other readings may indicate that the Claimant falls within a less impaired class, the Claimant shall be classified as falling within the more impaired class.

4.2.4 Claimants who are diagnosed with Multi-drug Resistant (**MDR**) or Extremely-drug Resistant (**XDR**) Tuberculosis shall be certified as:

4.2.4.1 MDR – First Degree Tuberculosis

4.2.4.2 XDR – Second Degree Tuberculosis

irrespective of the degree of lung function impairment associated with cardio-respiratory Tuberculosis.

5. **PRINCIPLES FOR THE AUTOPSY (POST-MORTEM) DIAGNOSIS AND CERTIFICATION OF ACUTE TUBERCULOSIS**

5.1 Post-Mortem Diagnosis of Acute Tuberculosis

The following criteria shall apply to the post-mortem diagnosis of acute Tuberculosis:

5.1.1 Lesions involving the lung parenchyma, bronchi, cavities, pleura, pericardium and/or hilar lymph nodes;

5.1.2 Granulomatous inflammation with caseous necrosis, epithelioid histiocytes and Langhans giant cells with or without acid-fast bacilli; and

5.1.3 The extent of the disease is categorized as: focal, moderate or severe

5.2 Post-Mortem Certification of Acute Tuberculosis

5.2.1 Second Degree Tuberculosis: Moderate to marked Tuberculosis, miliary Tuberculosis or bronchopneumonia Tuberculosis.

5.2.2 First Degree Tuberculosis: post-mortem certification is not possible.

5.3 Cardio-respiratory Tuberculosis shall be diagnosed as the primary cause of death only if it is specifically indicated as the cause of death in an autopsy report or on an official death certificate.

6. **MAPPING APPROVED ODMWA CERTIFICATES TO QUALIFYING DISEASES**

APPROVED ODMWA CERTIFICATE	QUALIFYING DISEASE
First Degree silicosis	Silicosis Class 2
Second Degree silicosis	Silicosis Class 3
First Degree tuberculosis	First Degree Tuberculosis
Second Degree tuberculosis	Second Degree Tuberculosis