


**DEED OF TRUST**



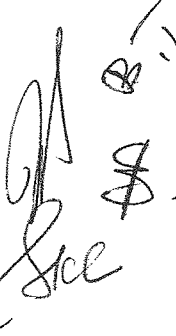
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**Q(H)UBEKA TRUST**

  
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## PART 1

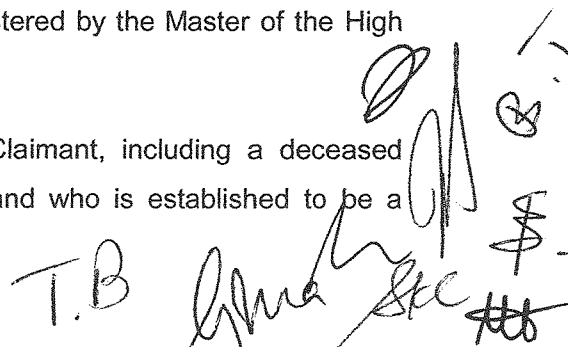
### 1. Definitions and interpretation

1.1 The following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate expressions shall bear corresponding meanings:

- (i) **"Anglo American"** means Anglo American South Africa Limited, a company registered in the Republic of South Africa with registration number 1917/005309/06;
- (ii) **"AngloGold"** means AngloGold Ashanti Limited, a company registered in the Republic of South Africa with registration number 1944/017354/06;
- (iii) **"Auditors"** means the auditors of the Trust from time to time;
- (iv) **"Beneficiaries"** means the persons referred to in clause 13;
- (v) **"Business Day"** means any day other than a Saturday, Sunday or Gazetted National Public Holiday in the Republic of South Africa;
- (vi) **"CCOD"** means the Compensation Commissioner for Occupational Diseases appointed under section 54(a) of ODMWA (as amended from time to time, or any successor thereto);
- (vii) **"Claimants"** means the persons identified as Claimants in the Settlement Agreement;
- (viii) **"COIDA"** means the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993 (as amended from time to time, or any successor thereto);
- (ix) **"Deed"** means this Deed and any annexes, schedules or attachments to it;
- (x) **"Dependant Claimant"** means the dependant and/or executor of the estate of a deceased Qualifying Claimant;
- (xi) **"Exposure"** means exposure to silica dust;
- (xii) **"HURIS"** means AngloGold's Human Resources Information System;

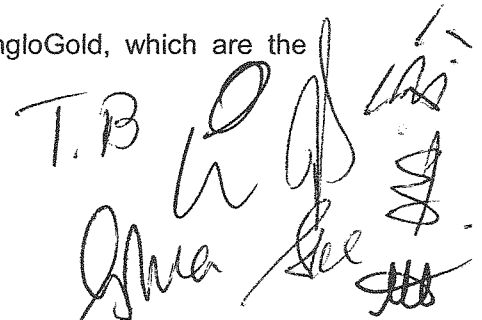
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- (xiii) **"ILO"** means the International Labour Organisation;
- (xiv) **"Medical Panel"** means the panel of experts appointed by the Trustees;
- (xv) **"MBOD"** means the Medical Bureau for Occupational Diseases established under section 2 of ODMWA (as amended from time to time, or any successor thereto);
- (xvi) **"Mbuyisa Neale"** means Mbuyisa Neale attorneys, a firm of attorneys practising in partnership in South Africa, which acted for the Claimants in the proceedings against Anglo American and AngloGold referred to in clause 2.1;
- (xvii) **"ODMWA"** means Occupational Diseases in Mines and Works Act, Act 78 of 1973 (as amended from time to time, or any successor thereto);
- (xviii) **"ODMWA Compliant Application"** means an application for compensation under ODMWA that complies with all relevant requirements of ODMWA, the MBOD and CCOD, that entitles the Qualifying Claimant to compensation under ODMWA ;
- (xix) **"ODMWA Qualifying Claimant"** means a Qualifying Claimant determined by the Trustees to have an SRD of Categories 2, 3 or 4 as referred to in clause 17.1 on whose behalf an ODMWA Compliant Application has been submitted to the MBOD;
- (xx) **"ODMWA Notice Date"**, in relation to an ODMWA Qualifying Claimant, means the date on which a copy of an ODMWA Compliant Application which has been submitted to the MBOD is provided to Anglo American and AngloGold following the establishment of the Trust;
- (xxi) **"Primary Object"** means the primary object of the Trust as detailed in clause 4;
- (xxii) **"Qualifying Claims Period"** means the period of three years from the date on which the Trust is registered by the Master of the High Court;
- (xxiii) **"Qualifying Claimant"** means a Claimant, including a deceased Claimant, with Qualifying Service and who is established to be a

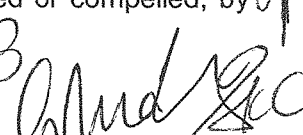
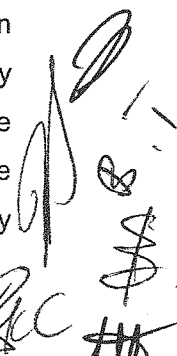
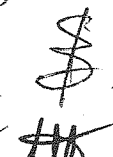

  
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Qualifying Claimant during the Qualifying Claims Period;

- (xxiv) **"Qualifying Dependant"** means a Dependant Claimant who is entitled to compensation in terms of clause 16.2(ii) of this Deed;
- (xxv) **"Qualifying Operations"** means those shafts/operations set out in Annexure "A" to this Trust Deed, where relevant during the periods reflected in that Annexure;
- (xxvi) **"Qualifying Service"** means at least two years of employment in aggregate at one or more Qualifying Operations;
- (xxvii) **"the Q(h)ubeka Trust Amount"** means the aggregate amount to be paid by Anglo American and AngloGold to the Trust from time to time as set out in clause 7.1 herein, subject to clause 7.2;
- (xxviii) **"Reasonable Proof"** in relation to Qualifying Service means a genuine Record of employment for the required period at one or more Qualifying Operations;
- (xxix) **"Record"** means an MBOD or CCOD record, a TEBA record, an official mine employment record, a HURIS record, or a similar written record of comparable evidential weight and credibility, which may include a work record, Government Department record, wage slip or pay advice identifying the Qualifying Claimant, or any other certificate or document originating from a Qualifying Operation which identifies the Qualifying Claimant as having been an employee of one or more Qualifying Operations for the required period;
- (xxx) **"Settlement Agreement"** means the settlement agreement to be concluded between the Settlers and the Claimants in which the parties agree to the establishment of the Trust;
- (xxxi) **"Settlement Repayment Amount"** means an amount (x) calculated according to the following formula:  $x = (R300 \text{ million divided by } 2413) \text{ multiplied by } (2413 \text{ minus } y)$ , where y is equal to the actual number of persons established to be Qualifying Claimants in terms of this Deed during the Qualifying Claims Period;
- (xxxii) **"Settlers"** means Anglo American and AngloGold, which are the founders of the Trust;
- (xxxiii) **"SRD"** means Silica Related Disease;

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- (xxxiv) **"Silica Related Disease"** means Silicosis and Silico-tuberculosis or any one of them as the case may be;
- (xxxv) **"the Trust"** means the Q(h)ubeka Trust, constituted in terms of this Deed;
- (xxxvi) **"the Trust Administration Costs"** means the reasonable costs of establishing, administering and operating the Trust in a manner that ensures that the assessment of Claimants and the processing and distribution of benefits is performed thoroughly, efficiently and reliably by personnel of expertise, skill and integrity, including the costs referred to in clause 9.1;
- (xxxvii) **"the Trust Bank Account"** means the bank account established by the Trust for receipt of amounts payable to the Trust in terms of this Deed, including the Q(h)ubeka Trust Amount and Trust Administration Costs;
- (xxxviii) **"Trustee/s"** means the persons appointed as the trustees of the Trust, for the time being, in accordance with clause 8.
- 1.2 In this Deed words importing the masculine gender shall include the feminine and neutral genders and vice versa. Reference to the singular shall include the plural and vice versa. The words "including" and "include" shall not be construed as or take effect as limiting the generality of the foregoing words.
- 1.3 If any definition imposes substantive rights and obligations on a party to this Deed, such rights and obligations shall be given effect to and shall be enforceable notwithstanding the fact that they are contained in a definition.
- 1.4 Expressions in this Deed shall bear the same meaning in schedules or annexures to this Deed which do not themselves contain their own definition.
- 1.5 Where any provision of this Deed requires Anglo American and AngloGold to pay an amount in equal shares, then, and notwithstanding any separate agreement or arrangement that may be concluded between Anglo American and AngloGold concerning the apportionment and allocation of responsibility for any such payments, under this Deed half of the relevant amount shall be payable by Anglo American and half of the relevant amount shall be payable by AngloGold. Neither of these parties may be required or compelled, by

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the Trust or otherwise, to pay any more than its half share of the relevant amount.

1.6 The expiry or termination of this Deed shall not affect such of the provisions of this Deed which are expressly provided to operate after such expiry or termination, or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the relevant clauses themselves do not provide for this.

1.7 The headings in this Deed are for convenience only and are to be ignored in construing this Deed.

## 2. Introduction

2.1 The Claimants instituted legal proceedings against Anglo American and AngloGold claiming damages for silicosis or silico-tuberculosis said to have been contracted by them as a result of their exposure to dust at certain shafts/operations for which Anglo American or AngloGold were alleged to be responsible.

2.2 The claims referred to in clause 2.1 have been settled by the parties and in consideration of such settlement, the parties to such litigation have agreed that this Trust be established.

2.3 The Trust is hereby established in accordance with, on the basis of and subject to the terms and conditions detailed herein.

## PART II: Trust and Trustees

### 3. Creation of the Trust

3.1 The Trust, which is created in terms of this Deed, shall be known as the Q(h)ubeka Trust.

3.2 The Settlers establish the Trust by donating R200 to the Trustees in their capacity as such, which donations shall be irrevocable.

### 4. The primary object of the Trust

The Primary Object of the Trust is to provide compensation to Qualifying Claimants and Dependant Claimants in respect of SRDs on the basis set out in this Deed and in any event thoroughly, efficiently and reliably, using personnel of expertise, skill and integrity.

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5. **Legal capacity**

5.1 The Trust shall have all the incidents and powers set out in clause 12.

6. **Establishing Qualifying Claimants**

6.1 Claimants will be established as being Qualifying Claimants in the manner set out in this clause 6.

6.2 As soon as reasonably possible after the registration of the Trust, Mbuyisa Neale will deliver to AngloGold a list of as much of the following information as is known by Mbuyisa Neale in respect of each of the Claimants:

- (i) names;
- (ii) identity numbers; and
- (iii) employment numbers.

6.3 AngloGold will use its best endeavours to complete a search of its employment records within three months of receipt of the list referred to in clause 6.2, or such further period as may be agreed in writing between AngloGold and the Trust.

6.4 AngloGold will provide the Trust on a monthly basis during the period referred to in clause 6.3 with the names of (i) the Claimants in respect of whom it has established proof of Qualifying Service; (ii) the Claimants in respect of whom, having searched its employment records, it has not established proof of Qualifying Service; and (iii) the Claimants in respect of whom it has not yet searched its employment records.

6.5 AngloGold will allow the Trust or a person nominated by the Trust to inspect the employment records referred to in clause 6.3 in respect of the Claimants.

6.6 Claimants referred to in 6.4 (i) will be treated as Qualifying Claimants for the purposes of this Deed. Claimants referred to in 6.4 (ii) and 6.4 (iii) will be treated as Qualifying Claimants for the purposes of this Deed only on provision of Reasonable Proof of Qualifying Service by the Trust to Anglo American and AngloGold.

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- 6.7 The Trustees will take such steps as are reasonably necessary to obtain Records for Claimants referred to in 6.4(ii) and 6.4(iii) or to assist Claimants to obtain Records.

## 7. The Q(h)ubeka Trust Amount

7.1 Anglo American and AngloGold shall be liable to pay into the Trust Bank Account the following amounts, in equal shares, which amounts the Trust is entitled to receive from Anglo American and AngloGold for the purposes of fulfilling the Primary Object:

- (i) R300 million due and payable within 10 Business Days of receipt of confirmation from the duly appointed and registered Trustees that the Trust Bank Account has been established, subject to clause 7.2;
- (ii) A further R50 million due and payable within 10 Business Days of the date on which the number of Qualifying Claimants established in terms of clause 6 reaches 2852 (two thousand eight hundred and fifty two);
- (iii) A further R45 million due and payable within 10 Business Days of the date on which the number of Qualifying Claimants established in terms of clause 6 reaches 3291 (three thousand two hundred and ninety one);
- (iv) A further R23 million due and payable within 10 Business Days of the date on which the number of Qualifying Claimants established in terms of clause 6 reaches 3729 (three thousand seven hundred and twenty nine);
- (v) A further R22 million due and payable within 10 Business Days of the date on which the number of Qualifying Claimants established in terms of clause 6 reaches 3949 (three thousand nine hundred and forty nine); and
- (vi) A further R24 million due and payable within 10 Business Days of the date on which the number of Qualifying Claimants established in terms of clause 6 reaches 4168 (four thousand one hundred and sixty eight).

7.2 If, by the end of the Qualifying Claims Period, fewer than 2413 (two thousand four hundred and thirteen) of the Claimants have been established

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in terms of clause 6 to be Qualifying Claimants, the Trust shall, within 30 days of demand by Anglo American and AngloGold, repay to Anglo American and AngloGold, in equal shares, the Settlement Repayment Amount.

- 7.3 Save as expressly provided for in this Deed, the Settlers shall have no obligation whatsoever to pay any additional amount to the Trust, and the Trustees shall not be entitled to claim any further amount whatsoever from the Settlers.

## 8. Trustees

### 8.1 First Trustees

Dr Sophia Kathrina Kisting-Cairncross, Mr John Richard Parker Doidge, Mr Goolam Mohammed Aboobaker, and Ms Brigitte Mathews are hereby appointed the first trustees of the Trust (collectively, the "First Trustees") and each hereby accepts appointment as such and the donation referred to in clause 3.2.

### 8.2 Number

- (i) There shall at all times be not less than 4 nor more than 7 Trustees.
- (ii) If at any time the number of Trustees falls below 4, the remaining Trustee or Trustees shall be entitled to continue to act in all matters affecting the Trust while appointing a new trustee which appointment must occur within three months of the number first falling below 4.
- (iii) The Trustees shall at all times comprise at least 1 occupational health specialist with at least 10 years' experience, 1 attorney or advocate with at least 10 years' experience, and 1 trustee with at least 8 years' experience as qualified chartered accountant.

### 8.3 Powers of assumption and appointment of successors

- (i) If any Trustee dies, resigns or is removed from office in terms of clauses 8.7 and 8.8, the remaining Trustees shall be entitled (but not obliged, subject to clause 8.2) to appoint another Trustee in accordance with the provisions of and on the same terms and conditions as set out in this Deed.
- (ii) Each successor Trustee appointed in terms of this clause 8.3 as a

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 John Richard Parker Doidge  
 Goolam Mohammed Aboobaker  
 Brigitte Mathews

Trustee shall, upon his or her written acceptance of appointment, be vested with and bound by all the powers and duties of a Trustee appointed in terms of this Deed.

- (iii) No juristic person shall be appointed on behalf of any Trustee to fulfil the duties and exercise the powers of that Trustee.

#### 8.4 Security

A Trustee shall not be required to furnish security in connection with their appointment as Trustee or the performance of their obligations and powers under this Deed and the Master and any such other person, body or authority are hereby directed to dispense with and not to require such security.

#### 8.5 Liability

Provided that a claim does not arise from their own gross negligence, recklessness, fraud or wilful default in the performance of their duties or the failure in the exercise of their rights and powers under this Deed to observe the degree of care, diligence and skill which can be reasonably expected of a person who manages the affairs of others:

- (i) no Trustee shall be personally liable for any loss suffered by the Trust or any Beneficiary, whatever the cause;
- (ii) no Trustee shall be liable for any act of dishonesty or other wilful misconduct or gross negligence committed by any other Trustee unless s/he knowingly allowed it or was an accessory thereto;
- (iii) the Trustees shall be indemnified by the Trust against any claims made against them arising out of or in any way connected with any act or omission in the course of administering the Trust;
- (iv) if the Trustees *bona fide* make any payment to any person whom they assume to be entitled thereto under the terms of this Deed and it be subsequently found that the recipient was not entitled thereto hereunder, the Trustees shall nevertheless not be responsible for the moneys so paid, in the absence of fraud or other wilful misconduct or gross negligence; but the Trustees shall nevertheless be obliged to take all reasonable steps to recover any such payment for the benefit of the Trust.

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**8.6 Exercise of powers by Trustees**

The Trustees shall at all times comply with and observe the provisions of this Deed when exercising their powers.

**8.7 Disqualification**

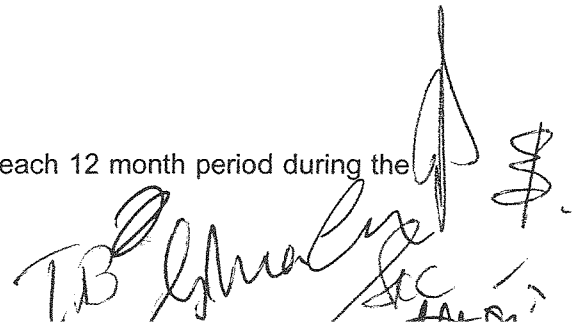
- (i) A person shall be disqualified from being a Trustee if such person:
  - (1) is a juristic person;
  - (2) would be disqualified from acting as a director of a company in terms of the Companies Act No. 71 of 2008 or any corresponding statutory provision;
  - (3) has been placed in sequestration, whether provisional or final, or has committed an act of insolvency as defined in the Insolvency Act, 1936 as amended;
  - (4) has been declared insane or incapable of managing their affairs;
  - (5) has committed an offence involving dishonesty under the laws of any country; or
  - (6) resigns as Trustee upon not less than 4 weeks' written notice to the remaining Trustees.

**8.8 Vacation of office**

- (i) A Trustee shall cease to hold office as such:
  - (1) automatically if the Trustee becomes disqualified from being a Trustee in terms of clause 8.7; or
  - (2) upon expiration of the notice period if the Trustee resigns, provided that the Trustee must give at least 4 weeks' written notice of their resignation to the remaining Trustees.
- (ii) The Trustee shall have no claim against the Trust, or against the party requesting their resignation, arising out of or in connection with their removal as Trustee.

**8.9 Chairpersons**

The Trustees shall appoint a chairperson for each 12 month period during the

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life of the Trust. Dr Sophia Kathrina Kisting-Cairncross will be the first Chairperson for the initial period of 12 months from the date of registration of the Trust.

#### 8.10 Meetings

- (i) The Trustees shall determine the manner in which meetings are to be convened and held, and shall meet at least every six months to consider and approve the payment of benefits and the information contained in such reports as are required to be made in terms of this Deed.
- (ii) Unless determined otherwise, the Trustees shall, on no less than 14 days' written notice, meet:
  - (1) at Johannesburg, unless the Trustees unanimously agree otherwise;
  - (2) for an annual general meeting (which shall be open to attendance by representatives of the Settlers and by any beneficiary or their representatives) within 6 months of the end of each financial year at which the accounts for the previous financial year shall be submitted for approval and consideration by the Trustees; and
  - (3) at such other times as any of the Trustees deem necessary.
- (iii) If any of the Trustees deems it necessary for the Trustees to meet, such Trustee shall convene a meeting on 14 days' written notice to the other Trustees. The notice shall specify the business to be dealt with at the meeting and, if possible, shall be accompanied by minutes of the previous meeting.

#### 8.11 Quorum

- (i) A quorum at any meeting of Trustees (including an adjourned meeting) shall, for the whole duration of the meeting, be at least 3 Trustees present.
- (ii) If within 30 minutes after the time appointed for a meeting, a quorum is not present or any Trustee meeting becomes inquorate part way through and remains inquorate for 30 minutes, the meeting shall stand adjourned to a day not less than 5 days and not more than 10 days after the date of the adjourned meeting. The place and time for

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such later meeting shall be determined at the adjourned meeting prior to its adjournment and notice of such continued meeting will be given to Trustees not present at the meeting. The business which shall be conducted at the continued meeting shall be restricted to that which was to have been, or remained to be, as the case may be, conducted at the adjourned meeting.

#### 8.12 Voting

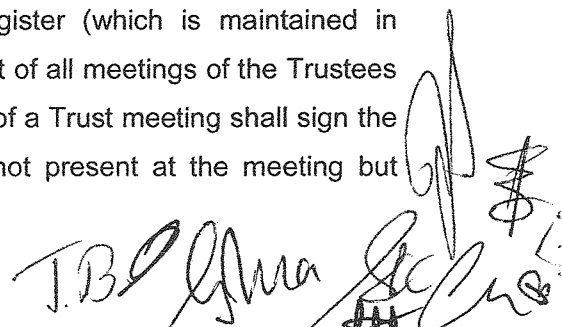
- (i) Decisions of the Trustees shall be taken by consensus if at all possible but in the absence of the Trustees reaching consensus, the majority vote of the Trustees present at a meeting shall prevail. Each Trustee shall be entitled to one vote.
- (ii) In the event of a deadlock in respect of decisions of the Trustees, the matter in respect of which the deadlock has arisen shall be referred to a meeting at which all the Trustees shall be present. If a deadlock again occurs in respect of the same matter, the Chairperson will have a casting vote.

#### 8.13 Round robin resolutions and electronic participation

- (i) A written resolution supported and signed by at least a majority of the Trustees shall have the same effect as if passed at a meeting. A resolution agreed in writing shall be valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted. Any written resolution must be approved by the necessary majority within 10 (ten) Business Days from the date of its initial circulation, failing which the resolution shall be of no force or effect.
- (ii) Meetings of Trustees shall be held by means of such telephonic, electronic or other communication facilities which permit all persons participating in the meeting, to communicate with each other simultaneously.

#### 8.14 Minutes and attendance register

Each Trustee shall sign the attendance register (which is maintained in respect of meetings of the Trustees) in respect of all meetings of the Trustees which such Trustee attends. The chairperson of a Trust meeting shall sign the register on behalf of every Trustee who is not present at the meeting but

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participates in terms of clause 8.13(ii) above. The Trustees shall keep minutes of all their meetings. A minute, or a certified copy of the minutes, signed by the chairperson or 2 of the Trustees present at the meeting, shall constitute evidence of the contents of the minutes, until the contrary is proved.

## 9. Costs and fees

9.1 The Trust Administration Costs shall include without limitation:

- (i) the reasonable costs of establishing the Trust and appointing the Medical Panel;
- (ii) all reasonable expenses which the Trustees shall be entitled to be paid for acting as Trustees of the Trust;
- (iii) all reasonable fees for acting as a Trustee of the Trust, subject to a unanimous decision of the Trustees that any Trustee shall be entitled to receive such fee, which fee shall be determined by the Trustees; and provided that the Trustees may authorise payment of any fee due to a Trustee to a third party nominated by that Trustee.
- (iv) all of the Trust's operating costs, including the reasonable costs of legal, medical and financial advisors and experts appointed by the Trustees for the purpose of giving effect to the Primary Object;
- (v) the reasonable costs of assisting Dependant Claimants as referred to in clause 16.2(ii);
- (vi) the reasonable costs of the Medical Panel and the medical tests and evaluations referred to in clause 11.3;
- (vii) the reasonable costs of assisting ODMWA Qualifying Claimants pursuant to clause 16.4;
- (viii) the reasonable costs of obtaining Records and assisting Claimants to obtain Records pursuant to clause 12.2(xiv).
- (ix) the reasonable costs of assisting Qualifying Claimants who have been subject to medical tests and evaluations by the Medical Panel who are not ODMWA Qualifying Claimants but who are nevertheless entitled to claim compensation under ODMWA, to submit such claims to the MBOD; and

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- (x) the costs of and associated with the Trustees engaging in Dispute Resolution pursuant to clause 21.

9.2 It is recorded that the Settlor will have paid into the trust account of Mbuyisa Neale an amount of R2 million ("the Advance on Trust Administration Costs") to be utilised for the immediate costs necessary to establish the Trust.

- (i) Within 10 Business Days after receipt of confirmation from the duly appointed and registered Trustees that the Trust Bank Account has been established, Mbuyisa Neale will deposit into the Trust Bank Account the balance of the Advance on Trust Administration Costs, after deduction of the immediate costs incurred in the establishment of the Trust, including the registration of the Trust, and the appointment and registration of the Trustees (the "Trust Establishment Costs").
- (ii) Mbuyisa Neale will within 20 Business Days provide the Trust and the Settlor with a detailed account of all Trust Establishment Costs expended, including evidence of disbursements, and the Trust is entitled to obtain from Mbuyisa Neale the balance of the Advance on Trust Administration Costs after deduction of the Trust Establishment Costs. Such monies shall be used by the Trust to cover the immediate Trust Administration Costs.

9.3 Anglo American and AngloGold shall be liable to pay, in equal shares, the following further amounts, into the Trust Bank Account, which may be used only for Trust Administration Costs, and on the following terms and conditions:

- (i) An amount of R8 million within 10 Business Days of receipt of notification from the Trustees to Anglo American and AngloGold of the establishment of the Trust Bank Account.
- (ii) A further amount of R10 million at the request of the Trustees against reasonable evidence being provided to Anglo American and AngloGold that the amount referred to in clause 9.3(i) has been utilised for Trust Administration Costs together with a detailed breakdown of those costs including reasonable evidence of disbursements.

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- (iii) Thereafter, Trust Administration Costs in excess of the amounts referred to in clauses 9.2, 9.3(i) and 9.3(ii) will be paid from interest and investment returns that accrue on the Q(h)ubeka Trust Amount.
- (iv) If the interest and investment returns referred to in clause 9.3(iii) are insufficient to cover further Trust Administration Costs, Anglo American and AngloGold will, within 15 Business Days of notice to this effect by the Trustees, pay such further amounts as may reasonably be required to cover further Trust Administration Costs needed to fulfil the Primary Object, against reasonable evidence being provided to Anglo American and AngloGold of the amounts of interest and investment returns referred to in clause 9.3 (iii) and a detailed breakdown of the Trust Administration Costs paid for out of those amounts, including reasonable evidence of disbursements.

## 10. Accounts and reports

- 10.1 The Trustees shall ensure that proper financial books and records are kept concerning the affairs of the Trust and the administration of the Trust funds 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.
- 10.2 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 or she can inspect them at all reasonable times.
- 10.3 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 of the Trust.
- 10.4 Every auditor of the Trust 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 and employees of the Trust such information and explanations as may be necessary for the performance of their duties as auditors of the Trust.
- 10.5 Without limitation to the obligations of the Trustees to keep proper records for the purposes hereof, the Trustees shall maintain comprehensive records of all Claimants assessed, including details of Claimants who have been

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established to be silicotic and have been identified with reasonable certainty, based, without limitation, on their names, identity number and ID book, TEBA Number, if available, and biometric recognition, if available, and who have personally attended a medical testing facility for medical testing and evaluation, or in the case of Dependant Claimants, have contacted the Trust within the Qualifying Claims Period.

- 10.6 The accounts of the Trust shall facilitate the keeping of true and proper records.
- 10.7 The Trustees shall provide to Anglo American and AngloGold on a six monthly basis a report setting out the following :-
- (i) the name, ID number, TEBA Number (if available) and biometric tracking of each Claimant assessed during the preceding six months;
  - (ii) details of the Qualifying Operation and Qualifying Service of each such Claimant referred to in 10.7(i);
  - (iii) whether or not the persons referred to in 10.7(i) were assessed to be silicotic and if so within which Category of disease as defined in clause 17.1.
- 10.8 The Trustees shall ensure that all Claimants to be assessed shall be required to consent to the subsequent disclosure of x-rays and medical records produced for the purposes of assessment by the Trust to Anglo American and AngloGold on the condition that such consent shall not extend to any personal information that is not required for the assessment of Claimants for compensation in terms of this Trust including, for the avoidance of any doubt, the Claimants' HIV status or sexual health.
- 10.9 The Trustees shall provide Anglo American and AngloGold with details of the amount of all benefits paid to each Claimant referred to in clause 16, copies of the records referred to in clause 10.8, disclosure of which has been consented to by the Claimants, and any other information reasonably requested by Anglo American and AngloGold in relation to the Claimants and the amounts paid to them, subject to the condition that Anglo American and AngloGold will limit disclosure of the information within their companies to those individuals who need access to the information including storing the information so that it is not available to employees of such companies generally, and will not disclose the information to any third party save for

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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.

10.10 The Trustees shall provide an audited final reconciliation at the termination of the Trust of all monies disbursed and any surplus available, and shall, prior to the dissolution of the Trust, make available to the Settlers all information concerning the operation of the Trust to which they are entitled in terms of this Deed. In the event of a surplus, the Trustees shall be authorised only to donate such surplus into a registered Non-Government Organisation scheme providing primary healthcare services to former mine workers in South Africa.

10.11 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:

- (i) the number of Qualifying Claimants who received an award from the Trust during the preceding year;
- (ii) the aggregate amount of all awards so made; and
- (iii) the fees, expenses, disbursements and emoluments charged to, paid or incurred by or on behalf of the Trust.

## 11. General Duties of the Trustees

11.1 The Trustees shall be obliged to fulfil the Primary Object as soon as is reasonably possible, but within the life of the Trust as set out in clause 15 below.

11.2 The Trustees shall ensure that payment of compensation is made only to -

- (i) Qualifying Claimants who:
  - (1) are entitled to be compensated in terms of the provision of clause 16 of this Deed, and
  - (2) have been identified with reasonable certainty, based (without limitation) on the following: name, identity number and copy of ID book, Teba number (if available), and (before payment is made) biometric recognition, and

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- (3) have personally attended at the medical testing facility for medical assessment and evaluation within the Qualifying Claims Period; or
- (ii) Qualifying Dependants who have lodged a claim with the Trust within the Qualifying Claims Period.
- 11.3 The Trustees shall appoint a Medical Panel to advise and to arrange medical testing and evaluation as reliably and as quickly as possible to determine the silicosis diagnosis and level of impairment of all Qualifying Claimants. The Medical Panel shall include qualified medical practitioners specialising in occupational health and qualified radiologists, all of whom should be suitably experienced in the diagnosis of occupational lung disease and the evaluation of respiratory impairment. The Trust shall ensure that the Medical Panel undertakes two rounds of medical testing and evaluation.
- (i) The first round will diagnose silicosis and where relevant assess the level of impairment of all Qualifying Claimants other than Deceased Claimants.
- (ii) The second round will be conducted immediately following the Qualifying Claims Period and will assess the level of impairment only of those Qualifying Claimants determined in the first round to be Category 1, as defined in clause 17.1(i). The purpose of the second round will be solely to determine whether any such Qualifying Claimant has progressed to being an ODMWA Qualifying Claimant and, if so, to ensure that such Qualifying Claimant enjoys the benefit of the assistance in obtaining ODMWA payments as set out in clause 16.4. No additional payment will be made by the Trust to any such Qualifying Claimant from the Q(h)ubeka Trust Amount in consequence of the second round.
- 11.4 The Trustees shall be obliged to use their best endeavours to locate as many of the Claimants as they are able to in order to ensure that they are presented for medical evaluation and assessment as soon as possible and in any event within the Qualifying Claims Period.
- 11.5 The Trustees must, within three months of the registration of the Trust, establish a fraud prevention programme that will prevent abuse of the benefits provided by the Trust and ensure that no Claimant is able to claim compensation more than once and that no Claimant will be able to rely on

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the medical records of another person.

11.6 The Trustees will require each Claimant who attends at a medical testing facility for medical assessment and evaluation as contemplated in clause 11.2(i)(3) and each Qualifying Dependent who lodges a claim with the Trust as contemplated in clause 11.2 (ii) to sign a release confirming that he or she:

- (i) will have no further claim against the Trust save as expressly set out in this Deed; and
- (ii) will have no claim or recourse of whatsoever nature against either of the Settlers arising from the terms of this Deed, or any failure by the Trustees to comply with the terms of the Deed or to conduct the affairs of the Trust in the manner required of them.

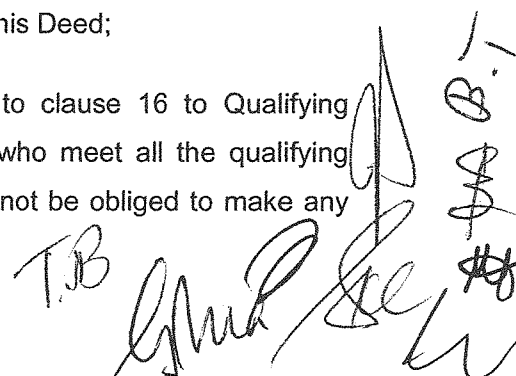
11.7 The release will be in the form of Annexure **B** to be agreed to and signed by each Claimant as a condition prior to medical assessment and evaluation as contemplated in clause 11.2(i)(3) and by each Qualifying Dependant as a condition prior to lodging a claim with the Trust as contemplated in clause 11.2 (ii).

## 12. Power of the Trustees

12.1 Subject to the provisions of this Deed, the Trustees shall, in order to achieve the Primary Object of the Trust, have all the powers of a natural major person (save for those inconsistent to be exercised by a Trust), in addition to all powers enjoyed by them under the common law and by statute, but subject only to the provisions to the contrary set out herein, and shall have the specific powers set out in this clause 12.

12.2 In order to fulfil the Primary Object, the Trustees shall have the powers (including, without limitation, any ancillary and plenary powers), capacity and ability to fulfil the Primary Object only, including, without limitation, the powers, capacity and ability to:

- (i) receive all claims from Qualifying Claimants who are proved to have SRD in the circumstances as set out in this Deed;
- (ii) make the awards determined subject to clause 16 to Qualifying Claimants and Qualifying Dependents who meet all the qualifying criteria specified in this Deed, but shall not be obliged to make any

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such award or pay any compensation within the first six months following registration of the Trust;

- (iii) receive and accept donations, settlements or awards from Anglo American and AngloGold as contemplated in this Deed;
- (iv) 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;
- (v) appoint experts in every field thereto to enable them to fulfil their mandate;
- (vi) be paid their reasonable expenses, as well as a reasonable fee for acting as Trustees;
- (vii) issue any relevant indemnities;
- (viii) determine and prescribe (subject to the provisions of this Deed):
  - (1) the establishment of the administrative mechanisms required by the Trust;
  - (2) the process which the Trust will follow in order to invite potential claims and the form in which claims are to be submitted;
  - (3) the process for evaluating claims;
  - (4) the process for the payment of any awards or payments;
  - (5) such research (including actuarial research) as may be reasonably required to achieve the Primary Object;
- (ix) invest assets of the Trust 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 (three months or less) with any one of South Africa's four largest banks. They will further be entitled to 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;
- (x) in their discretion jointly to exercise the voting power attached to any shares belonging to the Trust and which are held in any company;

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- (xi) enter into contracts which are necessary or requisite to achieve or fulfil the Primary Object of the Trust;
- (xii) inspect the employment records of Anglo American and AngloGold or appoint a representative to inspect those records;
- (xiii) prepare and publish information gathered by the Trust in an anonymised form for the purpose of advancing public health; and
- (xiv) obtain Records of Claimants, including by assisting Claimants to obtain Records.

12.3 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 Deed, including the power to institute proceedings against a Settlor to enforce that Settlor's obligations under this Deed.

12.4 The Trustees shall have the power to use, publish or disseminate in anonymised form and without profit or payment, the information and data gathered during the course of the operation of the Trust solely for the purpose of advancing public health.

12.5 It is further recorded that the Settlers are not permitted to:

- (i) exercise any oversight, or review, of assessment and compensation decisions made by the Trustees;
- (ii) sell, utilise or distribute the Claimants' medical information for commercial gain;
- (iii) disclose the Claimants' medical information to any third party save as necessary to prevent fraud 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;
- (iv) disclose the Claimants' medical information *en masse* to third parties; or
- (v) publish the Claimants' medical information save in anonymised form for the advancement of public health.

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### 13. Beneficiaries

The Beneficiaries of the Trust shall be the Qualifying Claimants and the Qualifying Dependants for the life of the Trust. For the avoidance of doubt, the benefits due to the Beneficiaries and the manner in which such benefits will be awarded will be determined pursuant to the terms of this Deed (Part III).

### 14. Possession and ownership of the assets of the Trust

14.1 Ownership of all assets acquired and all liabilities incurred by the Trust shall be and remain vested in the Trustees in their representative capacities. The Trustees may acquire only such assets as may reasonably be required for the discharge of the Trustees' duties.

14.2 The assets of the Trust may be registered in the name of the Trust, the Trustees for the time being or a nominee of the Trust, and must be reflected in an inventory that is included in the Trust's annual report. On dissolution of the Trust all assets must be disposed of for fair value and the proceeds must be clearly reflected in the final reconciliation of the Trust's accounts referred to in clause 10.10.

14.3 The Trustees shall take into their possession and retain in their care and custody or that of their agents, all and any instruments of title and other documents relating to or in respect of the Trust and its activities and to any trust fund and/or trust income.

14.4 No Beneficiary shall have any rights to such assets and/or income, unless and until the Trust makes any award to such Beneficiary.

### 15. Duration and termination

The Trust shall endure for a period of three years following the expiry of the Qualifying Claims Period unless otherwise terminated by the Trustees earlier, or extended by the Trustees by written agreement with the Settlers, which agreement shall not be unreasonably withheld.

## PART III: Payment Administration

### 16. Awards by Trustees

#### 16.1 Payment from the Trust funds

The Q(h)ubeka Trust Amount will be utilised in its entirety by the Trustees to

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make awards of compensation to Qualifying Claimants and Qualifying Dependants as further provided in clause 16.2 of this Deed.

## 16.2 Diseases

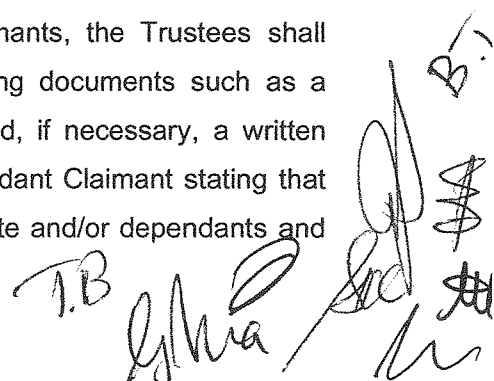
### (i) Qualifying Claimants

- (1) Qualifying Claimants shall only be entitled to compensation in the event that they are diagnosed with a SRD. Compensation shall only be awarded in circumstances where the Trustees are satisfied that a SRD has been diagnosed with an x-ray classified as at least 1/0 under the ILO international classification of radiographs of pneumoconiosis and to the levels of lung function impairment described in clause 17.1.
- (2) Any Claimant who seeks to be regarded as a Qualifying Claimant must in writing consent to, and authorise, any and all medical tests required by the Trustees to determine the existence of SRDs, Exposure and the extent thereof.

### (ii) Dependant Claimants

- (1) For the avoidance of any doubt, Dependant Claimants shall not be entitled to compensation unless the Trustees are reasonably satisfied that the deceased had contracted silicosis. Such assessment shall be by reference to medical records, such as (but not limited to) *post mortem* results, clinical records and chest x-rays, by reference to the deceased's employment history and/or any other evidence that the Trustees deem to be credible and reliable.
- (2) No Dependant Claimant/s' Claim shall be accepted by the Trustees in circumstances where the deceased had previously made a claim in relation to SRD and that claim had been accepted by the Trustees and paid out in full or lawfully rejected in terms of this Deed.
- (3) In making awards to Dependant Claimants, the Trustees shall procure copies of appropriate supporting documents such as a letter of executorship or curatorship and, if necessary, a written warranty and indemnity from the Dependant Claimant stating that he is the true representative of the estate and/or dependants and

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that payment to him shall be in full and final settlement of all their claims arising out of the death of the deceased and shall indemnify the Trust against any further claims from any other Dependant Claimants, and indemnifying the Trust against any other claims by Dependent Claimants. As necessary, the Trust shall assist Dependant Claimants to obtain formal letters of executorship or curatorship. The Trust shall accordingly exclude any further claims from any other Dependant Claimant in respect of that estate. The Dependant Claimant shall further undertake to distribute the award to any other person whom the Dependant Claimant purports to represent.

- (4) Dependant Claimants shall only be entitled to an award as set out in this Deed.

(iii) **Proof of exposure**

The Trustees shall be obliged to determine, to their reasonable satisfaction, whether Claimants have Qualifying Service;

**16.3 Proof of disease**

- (i) The Trustees shall appoint a Medical Panel of qualified medical practitioners specialising in occupational health and qualified radiologists, all of whom should be suitably experienced in the diagnosis of occupational lung disease and the evaluation of respiratory impairment.
- (ii) Acting on the advice of the Medical Panel, the Trust shall establish criteria that will allow for the objective assessment of impairment according to the Categories of disease and impairment referred to in clause 17.1. Testing shall include, without limitation, a physical examination (in respect of each living Claimant), and an assessment by the Medical Panel (in respect of each living and deceased Claimant), which shall be conducted in accordance with the criteria established by the Trust.
- (iii) Qualifying Claimants shall be required to satisfy the Trustees, acting reasonably in the circumstances that they have contracted a SRD and in the case of a Dependent's Claim that the deceased had contracted a SRD.

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- (iv) In respect of living Claimants, as a general rule and in relation to SRD, the Trustees will require such information as they deem necessary which reflects a firm diagnosis of SRD at or above a level of the ILO classification standard of 1/0 and a proper assessment of lung function impairment which should include :
- (1) a good quality postero-anterior chest radiograph in digital format, or alternatively a digitized version of a standard full sized chest x-ray film, of any Qualifying Claimant's lungs and/or a report of the results of the X-ray graded and classified according to the standard ILO classification system, such report to have been completed and signed by a suitably qualified and experienced radiologist;
  - (2) the results of lung function tests, carried out on spirometry equipment with proven accuracy, repeatability and reproducibility, which is calibrated and validated according to norms and standards for lung function testing generally accepted in South Africa, in which all the generally accepted flow/volume parameters are recorded and upon which an assessment is made by a suitably qualified and experienced pulmonologist or occupational health specialist as to the impairment and disability associated with the SRD;
  - (3) the results or the records of a clinical examination, including, where appropriate, any blood tests and sputum tests; relevant to the diagnosis, as may be required by the Trustees; and
  - (4) a history of silica dust exposure.
- (v) In circumstances where a definitive diagnosis is not capable of being made on the basis of the information above, the Trustees may in their discretion require any Qualifying Claimant to undergo such further examinations as they deem appropriate, including High Resolution Computerised Tomography scanning in order to assist them in determining the claim.
- (vi) Such medical evidence shall be recorded permanently in an electronic health record system which shall include unique biometric identification of each Qualifying Claimant and informed consent for the use of such medical evidence for the purposes of determining an

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award and for the purposes referred to in clause 10.

- (vii) The decision of the Trustees on medical issues shall be final and binding on the Claimant(s).

#### 16.4 ODMWA support

- (i) The Trustees will assist Qualifying Claimants to apply for ODMWA compensation from the MBOD and/or CCOD, including by submitting ODMWA Compliant Applications and all relevant information to the MBOD, and providing copies of these to Anglo American and AngloGold. Subject to any contrary requirement of the MBOD or CCOD, the Trust will be appointed to receive compensation payable to ODMWA Qualifying Claimants on their behalf and for their benefit.
- (ii) Anglo American and AngloGold will use their best endeavours to facilitate the payment of any amounts due in terms of ODMWA to ODMWA Qualifying Claimants on whose behalf the Trustees have submitted ODMWA Compliant Applications.
- (iii) In the event that an ODMWA Qualifying Claimant determined by the Trustees to be silicotic Category 2 (as defined in clause 17.1(ii)) does not receive the ODMWA compensation to which he is entitled from the CCOD within 12 months from the ODMWA Notice Date, Anglo American and AngloGold will at their election either appoint suitably qualified South African attorneys, which may be Mbuyisa Neale, to pursue litigation by ODMWA Qualifying Claimants against the CCOD, or alternatively pay the reasonable litigation costs incurred by the Trust to pursue such litigation.
- (iv) In the event that an ODMWA Qualifying Claimant determined by the Trustees to be silicotic Category 3 or 4 (as defined in clauses 17.1(iii) and 17.1(iv)) does not receive the ODMWA compensation to which he is entitled from the CCOD within 12 months from the ODMWA Notice Date Anglo American and AngloGold will pay to the Trust for the benefit of the ODMWA Qualifying Claimant an amount equivalent to the ODMWA compensation; provided that:
- (1) if any such payment would result in payments made under this clause 16.4(iv) exceeding, in the aggregate, R46,095 million, no further amounts will be paid in terms of this clause 16.4(iv), and

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the provisions of clause 16.4(iii) will apply to all further Qualifying Claimants who would otherwise be dealt with in terms of this clause 16.4(iv); and

- (2) further, if the Trust is subsequently notified that ODMWA compensation has been paid by the CCOD to an ODMWA Qualifying Claimant for whose benefit a payment has been made in terms of this clause, the Trust will refund to Anglo American and AngloGold any amount still held to the benefit of such ODMWA Qualifying Claimant under the terms of this Trust, but not more than the amount paid by Anglo American and AngloGold to the Trust for the benefit of that ODMWA Qualifying Claimant in terms of this clause 16.4(iv).
- (v) If an ODMWA Qualifying Claimant fails to receive ODMWA compensation as a result of his own negligence or failure to comply with any of the MBOD or CCOD requirements Anglo American and AngloGold will not be liable to pay any amounts in respect of that ODMWA Qualifying Claimant in terms of clauses 16.4(iii) and 16.4(iv) above.

## 17. Type and Quantification of awards by the Trustees

17.1 The Trustees shall determine the level of compensation to be paid to each class of Qualifying Claimants on the basis that the whole of the Q(h)ubeka Trust Amount, plus any interest and investment returns which have accrued on it, less the administration costs referred to in 9.3(iii), is to be distributed amongst the Qualifying Claimants. The Trustees may make an award to Qualifying Claimants who fall within any of the following four categories of lung disease:

- (i) Silicotic, no impairment, with no pulmonary TB or massive fibrosis – (80% FEV1 or FVC) "Category 1";
- (ii) Silicotic, mild impairment – able to meet physical demands of most jobs (79 to 60% FEV1 or FVC) or no impairment with pulmonary TB or no impairment with massive fibrosis "Category 2";
- (iii) Silicotic, moderate impairment – diminished ability to meet physical demands of many jobs (51 – 59% FVC or 41 – 59% FEV1) "Category 3";

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- (iv) Silicotic severe impairment – unable to meet physical demands of most jobs (<50% FVC, <40% FEV1) “Category 4” ;

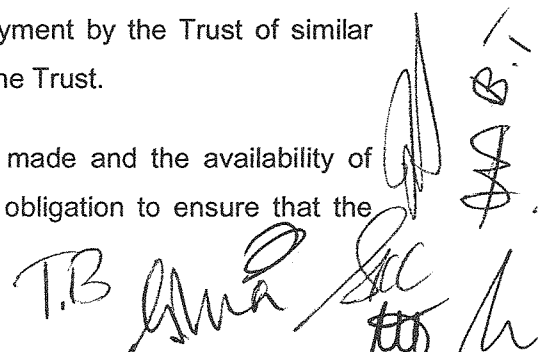
17.2 The amount of the award shall, subject to possible adjustments within each category to cater for age, be as follows:

- (i) for those who are found to fall into Category 1, 28% of the award for Category 4;
- (ii) for those who are found to fall into Category 2, 63% of the award for Category 4;
- (iii) for those who are found to fall into Category 3, 79% of the award for Category 4;
- (iv) for those who are found to fall into Category 4, an amount to be determined by the Trustees calculated on the basis of the full Q(h)ubeka Trust Amount being distributed to all Qualifying Claimants with SRD consistent with the proportions set out in this clause 17.2.
- (v) for Dependant Claimants where there is acceptable documentary evidence that the deceased contracted silicosis, the same award as for Category 1;
- (vi) for Dependant Claimants where there is no acceptable documentary evidence that the deceased contracted silicosis but there is other evidence that in the opinion of the Trustees constitutes acceptable evidence of silicosis, 20% of the award for Category 4.

## 18. Terms of any award

18.1 As soon as possible after a Beneficiary has been assessed as being entitled to an award, an initial payment shall be made to that Beneficiary. In determining the amount of an initial payment the Trustees shall have due regard to the potential number of claims that may be made during the life of the Trust, any relevant actuarial assumptions, and shall take all reasonable steps to avoid depleting the funds available from the Q(h)ubeka Trust Amount in a manner that would preclude payment by the Trust of similar amounts to similarly situated Beneficiaries of the Trust.

18.2 Depending on the overall number of claims made and the availability of funds, and with due regard to the Trustees' obligation to ensure that the


  
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whole of the Q(h)ubeka Trust Amount plus any interest and investment returns in excess of the Trust Administration Costs is to be distributed among Beneficiaries of the Trust, a further payment may be made to each Beneficiary after all initial payments have been made, and once the extent of the remaining funds is known.

18.3 In making any award the Trustees shall *not* deduct any amount which has been received by the Qualifying Claimant under the provisions of either of the ODMWA or the COIDA (or any successors thereto), or the amount to which the Qualifying Claimant would be entitled under either ODMWA or COIDA (or any successors thereto). The Trustees shall also *not* deduct from any award any amount which has been received by the Qualifying Claimant by way of insurance, medical aid or other medical payments relating to the SRD and/or its treatment, palliative or otherwise, to which his claim relates.

18.4 The Trustees will make appropriate arrangements to assist Beneficiaries in opening bank accounts. Any award shall be paid directly to the credit of a bank account in the name of the Beneficiary, provided that where it is impossible for a bank account to be opened a Beneficiary will not be deprived of their entitlement. The Trustees are required to take reasonable steps to satisfy themselves that the Beneficiary is the holder of that bank account.

#### 19. **Certain Specific Obligations of the Trustees**

The Trustees shall only receive and consider claims made by any person for an award upon the completion and signature by such person of an application form in which the applicant agrees, inter alia, that the decision of the Trustees relating to the application shall be final and binding on the applicant.

#### 20. **Dissolution**

20.1 The Trustees shall provide a final reconciliation, at the termination of the Trust, of all moneys disbursed and any surplus available.

20.2 In the event of a surplus, the Trustees shall be authorised only to donate such surplus into a registered Non-Government Organisation scheme providing primary healthcare services to former mine workers in South Africa.

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## 21. Dispute Resolution

- 21.1 For purposes of this clause 21, Parties means the Settlers and the Trustees of the Trust from time to time.
- 21.2 In the event of any dispute arising between the Parties relating to the terms of this Deed or its implementation, then one Party may give written notice (the Dispute Notice) to the other Parties to initiate the procedure set out below.
- 21.3 The Parties shall first endeavour to settle the dispute by mediation.
- 21.4 The Parties shall agree on a mediator within 10 Business Days of the Dispute Notice.
- 21.5 If for any reason the Parties do not agree on a mediator within 10 Business Days of the Dispute Notice or the mediator agreed upon by the Parties cannot or does not accept an invitation to mediate and the Parties have for any reason failed to agree on another mediator within 20 Business Days of the Dispute Notice, then either Party may ask Tokiso Dispute Resolution Proprietary Limited to appoint a mediator.
- 21.6 The Parties shall agree on the mediation procedure and failing agreement within 10 Business Days of the Dispute Notice or such longer period of time as may be agreed to in writing, then the mediation shall take place in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Model Conciliation Rules in force at the time of the dispute.
- 21.7 If for any reason, including lack of co-operation by the Parties, a dispute is not settled by mediation within 30 days of the Dispute Notice or such longer period of time as may be agreed to in writing between the Parties, then the dispute shall be settled by arbitration.
- 21.8 The Parties may agree on the arbitrator and the arbitration procedure and, failing agreement within 10 Business Days of the exhaustion of the period referred to in clause 21.7 or such longer period of time as may be agreed to in writing then the arbitration shall take place in accordance with the UNCITRAL Arbitration Rules in force at the time of the dispute.
- 21.9 The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators Southern Africa.

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- 21.10 Unless agreed otherwise the mediation and the arbitration shall be administered by the Parties.
- 21.11 The number of mediators shall be one and the number of arbitrators shall be one.
- 21.12 The place of the mediation and the arbitration hearing shall be Johannesburg, South Africa.
- 21.13 The governing procedural law of the mediation and the arbitration shall be the law of South Africa.
- 21.14 The arbitrator shall have the same remedial powers as a court of law in South Africa would have were it adjudicating the dispute.
- 21.15 The arbitrator shall deliver an award together with written reasons within 30 days from the date upon which the arbitration ends.
- 21.16 Nothing in this clause shall preclude any party from seeking urgent interim relief from any Court of competent jurisdiction.

#### **PART IV: Miscellaneous Matters**

##### **22. Governing Law**

This Deed shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

##### **23. Divisibility**

Each clause of this Deed is severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be of full force and effect and shall continue to be of full force and effect.

##### **24. Counterparts**

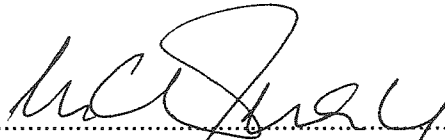
This Deed may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

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Signed at SANDTON on 4 MARCH 2016.

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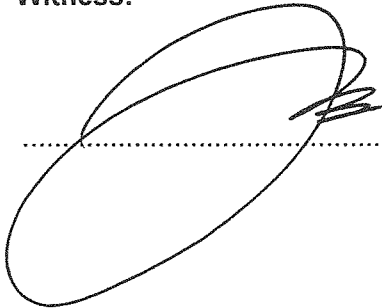
for Anglo American South Africa Limited

  
.....  
who warrants his authority thereto  
MEC MURRAY

Signed at CAPE TOWN on 5 MARCH 2016.

Witness:

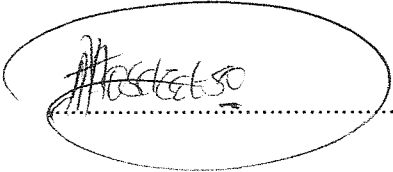
for AngloGold Ashanti Limited

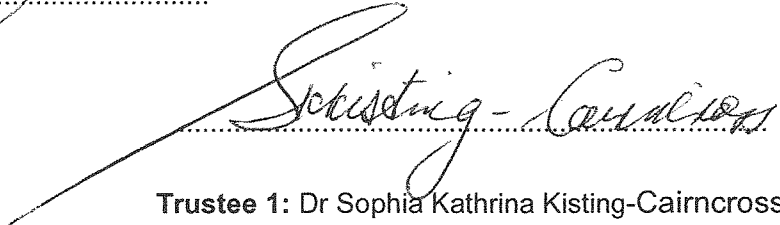
  
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who warrants her authority thereto

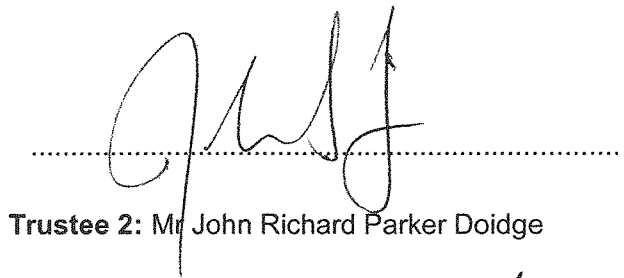
J.B  
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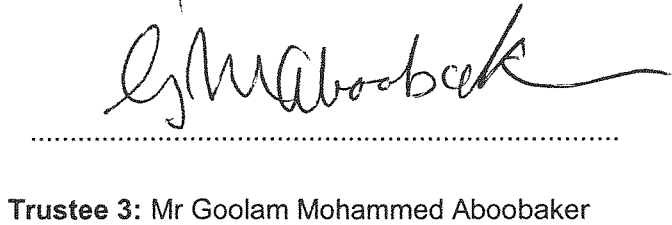
Signed at: Barnforton 3rd March 2016.

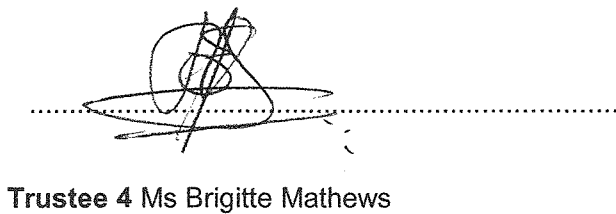
**Witness:**

  
.....

  
.....  
**Trustee 1: Dr Sophia Kathrina Kisting-Cairncross**

  
.....  
**Trustee 2: Mr John Richard Parker Doidge**

  
.....  
**Trustee 3: Mr Goolam Mohammed Aboobaker**

  
.....  
**Trustee 4 Ms Brigitte Mathews**



**Annexure "A"**

The Qualifying Operations are the shafts or operations which were owned or operated by the following South African gold mining companies, where relevant during the periods indicated:

Anglo American;

AngloGold (formerly known as Vaal Reefs Exploration and Mining Company Limited; and recording that Shafts 1, 3, 4, 5, 6 and 7 were sold by Vaal Reefs in 1998 and Shaft 2 was sold in 2000, with the effective date of sale being 1 July 2001; and that the Joel mine was owned by AngloGold between 1998 and April 2002);

Elandsrand Gold Mining Company Limited;

Free State Consolidated Gold Mines Limited;

East Rand Gold and Uranium Company Limited;

Western Deep Levels Limited;

President Brand Gold Mining Company Limited;

President Steyn Gold Mining Company Limited;

Western Holdings Limited;

Free State Consolidated Gold Mines (Operations) Limited;

Inter-Mines Services O.F.S. (Proprietary) Limited;

Free State Saaiplaas Gold Mining Company Limited;

Freddies Consolidated Mines Limited;

Free State Geduld Mines Limited;

Welkom Gold Mining Company Limited;

Video Mining Company Limited.

T.B. [Signature] B.T.  
[Signature] Sec [Signature]  
[Signature]

## Annexure "B"

## Release from all claims [Qualifying Claimant]

I, the undersigned,

[insert full names and identity number]

confirm that

1. I am one of the Claimants as defined in the Deed of Trust creating the Q(h)ubeka Trust ("the Trust").
2. I have settled, fully and finally, all of my claims for Occupational Lung Disease against the Settlers in terms of a settlement agreement under which the Settlers have established the Trust.
3. In accordance with the terms of the Trust, the Trustees are required to determine whether or not I qualify for the award of a benefit.
4. I acknowledge and accept irrevocably that
  - 4.1 The determination by the Trustees of the Trust referred to in 3 is final and binding on me.
  - 4.2 As against the Trust or any one of its Trustees, I will have no claims of any nature save for (i) a claim to a benefit in the event of a determination by the Trustees in my favour, or (ii) in the event of any failure by the Trustees to comply with the terms of the Trust Deed, a claim that seeks to enforce the terms of the Trust Deed, or that requires the Trustees to conduct the affairs of the Trust in the manner required of them.
  - 4.3 As against either of the Settlers of the Trust, I will have no claim or recourse of whatsoever nature arising from the terms of the Trust Deed, any failure by the Trustees to comply with the terms of the Trust Deed, or any failure of the Trustees to conduct the affairs of the Trust in the manner required of them.
5. For the purposes of paragraphs 2 and 4:
  - 5.1 Settlers means Anglo American South Africa Limited and AngloGold Ashanti Limited and all of their former or present direct or indirect holding companies, subsidiaries and/or associated companies and their former or present or future directors and/or officers and/or employees and/or shareholders anywhere in the world from time to time or any one of them as the case may be; and

T.B

5.2 Occupational Lung Disease means tuberculosis, silicosis, silico-tuberculosis, or any other respiratory disease that may have been contracted as a result of employment on a gold mine in South Africa.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
[insert full names of signatory]

-----  
**Release from all claims [Dependant Claimant]**

I, the undersigned,

[insert full names and identity number]

confirm that

- 1. I am a Dependant Claimant as defined in the Deed of Trust creating the Q(h)ubeka Trust ("the Trust").
- 2. I have settled, fully and finally, all of my claims against the Settlers arising from Occupational Lung Disease of a deceased Qualifying Claimant in terms of a settlement agreement under which the Settlers have established the Trust.
- 3. In accordance with the terms of the Trust, the Trustees are required to determine whether or not I qualify for the award of a benefit.
- 4. I acknowledge and accept irrevocably that
  - 4.1 The determination by the Trustees of the Trust referred to in 3 is final and binding on me.
  - 4.2 As against the Trust or any one of its Trustees, I will have no claims of any nature save for (i) a claim to a benefit in the event of a determination by the Trustees in my favour, or (ii) in the event of any failure by the Trustees to comply with the terms of the Trust Deed, a claim that seeks to enforce the terms of the Trust Deed, or that requires the Trustees to conduct the affairs of the Trust in the manner required of them.
  - 4.3 As against either of the Settlers of the Trust, I will have no claim or recourse of

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whatsoever nature arising from the terms of the Trust Deed, any failure by the Trustees to comply with the terms of the Trust Deed, or any failure of the Trustees to conduct the affairs of the Trust in the manner required of them.

- 5. For the purposes of paragraphs 2 and 4:
  - 5.1 Settlers means Anglo American South Africa Limited and AngloGold Ashanti Limited and all of their former or present direct or indirect holding companies, subsidiaries and/or associated companies and their former or present or future directors and/or officers and/or employees and/or shareholders anywhere in the world from time to time or any one of them as the case may be; and
  - 5.2 Occupational Lung Disease means tuberculosis, silicosis, silico-tuberculosis, or any other respiratory disease that may have been contracted as a result of employment on a gold mine in South Africa.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

**[insert full names of signatory]**



Handwritten signatures and initials, including 'TB', 'Sec', and 'Lima'.