

## **DEED OF TRUST**

creating

## **ASBESTOS RELIEF TRUST**

## TABLE OF CONTENTS

	<b>Page No.</b>
PART 1: Introductory.....	4
1.Definitions and interpretation.....	4
2.Introduction.....	10
PART II: Trust and Trustees.....	11
3.Creation of the Trust.....	11
4.The primary object of the Trust.....	11
5.Legal capacity.....	11
6.Trustees.....	12
6.1number.....	12
6.2powers of assumption and appointment of successors.....	13
6.3security.....	13
6.4liability.....	14
6.5exercise of powers by Trustees.....	14
6.6disqualification.....	14
6.7vacation of office.....	15
6.8chairpersons.....	15
6.9meetings.....	15
6.10quorum.....	15
6.11voting.....	16
6.12round robin resolutions.....	16
6.13minutes and attendance register.....	16
6.14costs and fees.....	17
6.15accounts and reports.....	17
7.Power of the Trustees.....	17
8.Beneficiaries.....	20
9.Possession and ownership of the assets of the Trust.....	20
10.Duration and termination.....	21
PART III: Payment Administration.....	21
11.Awards by Trustees.....	21
11.1payment from the Trust funds.....	21
11.2diseases.....	22
11.2.1Occupational and Environmental Claimants.....	22
11.2.2Dependants' Claimants.....	23
11.2.3proof of exposure.....	24
11.3proof of disease.....	25
12.Terms of any award.....	27
13.Certain Specific Obligations of the Trustees.....	30

14.Social Projects.....	33
PART IV : Miscellaneous Matters.....	33
15.Governing Law .....	33
16.Divisibility .....	33
17.Counterparts.....	33

## **PART 1: Introductory**

### **1. Definitions and interpretation**

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:

<b>"ACA"</b>	-	African Chrysotile Asbestos Limited, a public company incorporated in accordance with the laws of the Republic of South Africa under registration number 1944/017008/06, or any successor to ACA;
<b>"ARD"</b>	-	asbestos-related disease;
<b>"Asbestos-related disease"</b>		mesothelioma, asbestos-related lung cancer, asbestosis, asbestos-related pleural thickening, or any one of them as the case may be;
<b>"Asbestos related lung cancer"</b>		a bronchial or other carcinoma of the lung together with bilateral pleural thickening;
<b>"Auditors"</b>	-	the auditors of the Trust from time to time. The initial auditors shall be one of Deloitte & Touche, KPMG, PriceWaterhouse-Coopers or Ernst & Young;
<b>"Beneficiaries"</b>	-	the persons referred to in clause 8;
<b>"Brasg"</b>		Stanley Brasg & Associates Inc., a firm of attorneys of 118 Ivy Road, Norwood, Johannesburg, or any successor to Brasg;
<b>"CCOD"</b>	-	the Compensation Commissioner for Occupational Diseases appointed pursuant to COIDA;

- "COIDA"** - the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1996 (as amended from time to time, or any successor thereto);
- "Deed"** - this Deed and any annexes, schedules or attachments to it;
- "ILO"** - the International Labour Organisation;
- "Environmental Claimants"** - persons that lived in the vicinity of a Qualifying Operation and suffering from an ARD as described in clause 11.2.1;
- "Dependant/s Claimants"** - the dependants and/or executors of the estate of persons including those who have died from mesothelioma or asbestos-related lung cancer contracted as a result of occupational or environmental exposure to asbestos dust from the Qualifying Operations within a period of 3 years prior to the registration of their claims;
- "Founders"** - each of Gencor, Gefco and Msauli;
- "Gefco"** - The Griqualand Exploration and Finance Company Limited, a public company incorporated in accordance with the laws of the Republic of South Africa under registration number 1970/011100/06, or any successor to Gefco;
- "Gefco Group"** - each of Gefco and/or Gefco's former or present direct or indirect subsidiaries and/or associated companies and its former or present or future directors and/or officers and/or employees and/or shareholders anywhere in the world from

time to time (including Hanova) or any one of them, as the case may be;

**"the Gefco Settlement"**

- that part of the Settlement Agreement (Part III) which settles all disputes between, *inter alia*, Qualifying Claimants that are a party to the Settlement Agreement and Gefco and Hanova which relate to, arise out of or are connected with exposure to asbestos dust or the contraction of ARD on the terms and conditions set out in the Settlement Agreement;

**"the Gefco Settlement Amount"**

- is the amount to be paid by Gefco to the Trust pursuant to the terms of the Gefco Settlement, less provision for costs agreed to in the Settlement Agreement;

**"Gencor" -**

Gencor Limited, a public company incorporated in accordance with the laws of the Republic of South Africa under registration number 1895/001232/06, or any successor to Gencor;

**"Gencor Group"**

- each of Gencor and/or Gencor's former or present direct or indirect subsidiaries and/or associated companies and its 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;

**"the Gencor Settlement"**

- that part of the Settlement Agreement (Part II) which settles all disputes between, *inter alia*, Qualifying Claimants that are a party to the Settlement Agreement and Gencor which relate to,

arise out of or are connected with exposure to asbestos dust or the contraction of ARD on the terms and conditions set out in the Settlement Agreement;

**"the Gencor Settlement Amount"**

- is the amount to be paid by Gencor to the Trust pursuant to the terms of the Gencor Settlement, less provision for costs as agreed to in the Settlement Agreement;

**"Hanova" -**

(i) Hanova Mining Holdings (Proprietary) Limited, a private company incorporated in accordance with the laws of the Republic of South Africa under registration number 1988/04021/07, or any successor to Hanova;

(ii) Hanova Management Services (Proprietary) Limited, a private company incorporated according to the laws of the Republic of South Africa under registration number 1978/004365/07 and having its principal place of business at Everite House, 20 De Korte Street, Braamfontein, or any successor thereto;

(iii) Hanova Investments CC, a Close Corporation incorporated according to the laws of the Republic of South Africa under registration number CK1988/019314/23 and having its principal place of business at Everite House, 20 De Korte Street, Braamfontein, or any successor thereto.

**"HRCT" -**

High Resolution Computerised Tomography;

**"Kubari" -**

Herman Kubari, a deceased adult male who, prior to his death, resided at 396 Mocwari Street, Mothibistadt, North West Province;

- "Lombaard"** - Coert Johannes Lombaard, a deceased adult male who, prior to his death, resided at 133 Jacqueline Avenue, Randhart, Alberton, Gauteng;
- "MBOD"** - the Medical Bureau for Occupational Diseases;
- "Msauli"** - Msauli Asbes Beperk, a public company incorporated in accordance with the laws of the Republic of South Africa under registration number 1951/01937/06, or any successor to Msauli;
- "Msauli Group"** - each of Msauli and/or Msauli's former or present direct or indirect subsidiaries and/or associated companies (including ACA) and its 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;
- "the Msauli Settlement"** - that part of the Settlement Agreement (Part IV) which settles all disputes between, *inter alia*, Qualifying Claimants that are a party to the Settlement Agreement and Msauli and ACA which relate to, arise out of or are connected with exposure to asbestos dust or the contraction of ARD on the terms and conditions set out in the Settlement Agreement;
- "the Msauli Settlement Amount"** - is the amount to be paid by Msauli to the Trust pursuant to the terms of the Msauli Settlement, less provision for costs agreed to in the Settlement Agreement;



- "Ncheyagae" -** Piet Lentikile Ncheyagae, a deceased adult male who, prior to his death, resided at 100 Skinnington Street, Danielskuil, Northern Cape;
- "NNS" -** Ntuli Noble and Spoor Inc, a firm of attorneys and conveyancers having its principal place of business at 35 Hendrik Potgieter Street, Nelspruit, or any successor to NNS;
- "Occupational Claimants"** - a person employed at a Qualifying Operation and suffering from an ARD as described in clause 11.2.1;
- "ODMWA" -** Occupational Diseases in Mines and Works Act, Act 78 of 1973 (as amended from time to time, or any successor thereto);
- "Primary Object"** - the primary object of the Trust as detailed in clause 4;
- "Qualifying Claimant"** - any Occupational Claimant, Environmental Claimant or Dependant Claimant, or any one of them as the context may require (excluding any of the Cape Claimants as defined in the Settlement Agreement) as further set out in clause 11;
- "Qualifying Operations"** - any of the operations of any of the Gencor Group, the Gefco Group and/or the Msauli Group, as the case may be;
- "Qualifying Period"** - the period 1965 to 1988 inclusive;
- "the Settlement Agreement"** - the settlement agreement entered into between, *inter alia*, Gencor, Gefco, NNS, Msauli, ACA, Hanova and a number of Qualifying Claimants settling all disputes between them which relate to, arise out of

or are connected with exposure to asbestos dust or the contraction of ARD on the terms and conditions set out in such agreement, which agreement incorporates the Gencor Settlement, the Gefco Settlement and the Msauli Settlement;

**"the Trust"** - the Asbestos Relief Trust, constituted in terms of this Deed;

**"Trustees"** - the persons appointed as the trustees of the Trust, for the time being, in accordance with clause 6.

In this Deed words importing the masculine gender shall include the feminine and neutral genders and vice versa.

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.

Where any number of days is prescribed in this Deed, those days shall be reckoned exclusively of the first and inclusively of the last, unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

Expressions in this Deed shall bear the same meaning as schedules or annexes to this Deed which do not themselves contain their own definition.

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.

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

## **2. Introduction**

The parties to the Settlement Agreement have agreed to settle fully and finally and without any admission of liability by Gencor, any member of the Gencor Group, Gefco,

any member of the Gefco Group, Msauli, any member of the Msauli Group, ACA and Hanova, all disputes between them which relate to, arise out of or are connected with exposure to asbestos dust or the contraction of an ARD on the terms and conditions set out in the Settlement Agreement.

As part of the terms of the Settlement Agreement, it was agreed that the Trust will be established to administer the provision for compensation to Qualifying Claimants in respect of ARDs and the Founders wish to establish the Trust to facilitate this process.

Accordingly, the Trust is established in accordance with, on the basis of and subject to the terms and conditions detailed below.

## **PART II: Trust and Trustees**

### **3. Creation of the Trust**

The Trust created in terms of this Deed shall be known as the Asbestos Relief Trust.

The Founders establish the Trust by each donating R100 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 in respect of ARDs as fully, fairly and effectively as its means allow, having due regard, *inter alia*, to:

the respective settlement amounts received by the Trust;

the life of the Trust; and

the actual and likely number of claims submitted, or to be submitted to the Trust for compensation.

### **5. Legal capacity**

The Trust shall have all the incidents and powers which attach to a separate juristic legal person in terms of the laws of the Republic of South Africa.

The Trust may sue or be sued in its own name.

## 6. Trustees

### 6.1 number

Subject to the provisions of Clause 6.1.2 within 3 months of the registration of the Trust, the number of Trustees in office shall be increased to 5, nominated as follows:

2 Trustees shall be nominated by NNS acting on behalf of a number of Qualifying Claimants in the litigation pursuant to which the Trust is established (as more fully set out in the Settlement Agreement);

one Trustee shall be nominated by Gencor or any party nominated by Gencor;

one Trustee shall be nominated by Gefco and Msauli; and

one Trustee shall be agreed upon by NNS, Gencor, and Gefco and Msauli. This Trustee shall be a person with professional qualifications and/or experience relevant to the administration of this Trust. This person shall be the **First Trustee** and shall act as the interim chairperson (until such time as all five Trustees have been appointed and they appoint a chairperson as provided for in 6.8) and shall be charged to attend to all necessary matters referred to in clause 13 below, including attending to all matters of an administrative nature including the opening of Trust bank accounts. Failing agreement, this Trustee shall be nominated by the Chairman for the time being of the Johannesburg Bar Council or any successor thereto.

For the avoidance of doubt, the power of nomination referred to above is of immediate effect. However the continued right to nominate and/or the appointment of any Trustee/s so nominated is subject to (in the case of Gencor, Gefco and/or Msauli) the payment by them of their respective settlement amounts, and further to the following :

If the resolute conditions set out in Clauses 3.1, 5.1.2 and 7.1.2 of the Settlement Agreement do occur (ie the proposed Gencor unbundling is not completed in every respect by 30 June 2003 or such later date as may be agreed in writing between Gencor and NNS) then any trustees so appointed shall resign on the winding up of the Trust as provided for in Clause 10.2;

If the resolute condition set out in Clause 5.1.1 of the Settlement Agreement occurs and the resolute conditions set out in Clause 3.1, 7.1.1 and 7.1.2 of the Settlement Agreement do not occur, then the continued right of Gefco to nominate a Trustee (with Msauli) as provided for in 6.1.1.3 and its right to agree a Trustee as provided for in 6.1.1.4, shall lapse;

If the resolute condition set out in Clause 7.1.1 of the Settlement Agreement occurs and the resolute conditions set out in Clause 3.1, 5.1.1 and 5.1.2 of the Settlement Agreement do not occur, then the continued right of Msauli to nominate a Trustee (with Gefco) as provided for in 6.1.1.3 and its right to agree a Trustee as provided for in 6.1.1.4, shall lapse;

If the resolute conditons set out in 5.1.1 and 7.1.1 of the Settlement Agreement occur, then the right of Gefco and Msauli to nominate a Trustee pursuant to the provisions of 6.1.1.3 shall lapse, as shall their right to agree a Trustee pursuant to the provisions of 6.1.1.4. If a Trustee had been appointed pursuant to the provisions of 6.1.1.3 prior to the resolute conditions in 5.1.1 and 7.1.1 of the Settlement Agreement occurring, such Trustee shall resign immediately upon the resolute conditions occurring, in which event, the number of Trustees will be reduced accordingly.

## **6.2 powers of assumption and appointment of successors**

If during the first 2 years of the existence of the Trust, any Trustee resigns or is removed from office in terms of clauses 6.6 and 6.7, another Trustee shall be nominated by the party that nominated the Trustee being replaced in accordance with the provisions of and on the same terms and conditions as set out in this Deed.

If after the first 2 years of the existence of the Trust, any Trustee resigns or is removed from office in terms of clauses 6.6 and 6.7, a successor Trustee shall be determined by the remaining Trustees but after consulting with those persons who nominated the Trustee(s) whose vacant post(s) they are filling.

Each successor appointed in terms of this clause 6.2 as a Trustee shall, upon its written acceptance of appointment, be vested with and be bound by all the powers and duties of a Trustee appointed in terms of this Deed.

No Trustee shall be entitled to nominate another Trustee, its successor Trustee to it, or a person to fulfil its duties and exercise its powers as Trustee on its behalf other than a person nominated by a corporate trustee in terms of section 6(4) of the Trust Property Control Act.

## **6.3 security**

The Trustees shall not be required to furnish security in connection with its appointment as Trustee or the performance of their obligations and powers under this Deed.

#### **6.4 liability**

Provided that a claim does not arise from its own negligence, fraud or wilful default in the performance of its duties or the exercise of its 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:

no Trustee shall be personally liable for any loss suffered by the Trust or any Beneficiary, whatever the cause;

subject to any prior claims of the Beneficiaries, the Trustees shall be indemnified by the Trust against any claims made against it arising out of or in any way connected with any act or omission in the course of administering the Trust.

#### **6.5 exercise of powers by Trustees**

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

#### **6.6 disqualification**

A person shall be disqualified from being a Trustee if such person:

being a natural person, 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;

being a legal person, has been placed in liquidation (whether provisional or final), a judicial manager, curator or like administrator has been appointed to manage its business and affairs or application has been or is likely to be made to appoint such a judicial manager, has been or application has been or is likely to be made to have it deregistered, has or is likely to enter into a scheme of compromise with its creditors or of arrangement with its members in terms of section 311 of the Companies Act, 1973;

being a natural person, is insane or incapable of managing his affairs;

has committed an offence involving dishonesty under the laws of any country;

resigns as Trustee upon not less than 4 weeks' written notice to the remaining Trustees.

#### **6.7 vacation of office**

A Trustee shall cease to hold office as such:

automatically if the Trustee becomes disqualified from being a Trustee in terms of clause 6.6; or

if requested to resign by the party that nominated it for appointment; or

upon expiration of the notice period if the Trustee resigns, provided that the Trustee must give 4 weeks' written notice of his resignation to the remaining Trustees.

The Trustee shall have no claim against the Trust, or against the party requesting its resignation, arising out of or in connection with its removal as Trustee.

#### **6.8 chairpersons**

The Trustees may appoint a chairperson and a vice-chairperson either for such period, not exceeding one year, as they may decide, or for a specific meeting. Neither the chairperson nor the vice-chairperson will have a casting vote in respect of any decision to be taken by the Trust.

#### **6.9 meetings**

The Trustees shall, on no less than 14 days' written notice, meet:

at Johannesburg, unless the Trustees unanimously agree otherwise;

for an annual general meeting (which shall be open to the public) within 9 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

at such other times as any of the Trustees deem necessary.

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.

#### **6.10 quorum**

Within the first 3 months of registration of the Trust, a quorum at a meeting of Trustees shall be all Trustees present, whereafter a quorum at a meeting of Trustees shall be at least 3 Trustees present of which at least 1 must be a Trustee nominated by Gencor or

a Trustee nominated by Gefco and Msauli (for so long as the Trustees comprise at least one Trustee nominated by Gencor or Gefco and/or Msauli).

If within 60 minutes after the time appointed for a meeting, a quorum is not present, 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. If at such continued meeting a quorum of Trustees is not present within 60 minutes after the time appointed for such meeting, the Trustees present in person at such meeting shall be a quorum. The place and time for 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 conducted at the adjourned meeting.

#### **6.11 voting**

Decisions of the Trustees shall be taken by the majority vote of the Trustees present at a meeting.

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, or all of the Trustees fail to attend the meeting called in terms of this clause 6.11.2, then the matter is deemed to have been rejected.

#### **6.12 round robin resolutions**

A written resolution unanimously supported and signed by all the Trustees shall have the same effect as if passed at a meeting.

#### **6.13 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 Trustees shall keep minutes of all their meetings. A minute, or a certified copy of the minutes, signed by the chairman or 2 of the Trustees present at the meeting, shall constitute evidence of the contents of the minutes, until the contrary is proved.



#### **6.14 costs and fees**

The Trustees shall be entitled to be paid their reasonable expenses as well as a reasonable fee for acting as Trustees by the Trust.

The Trust shall be responsible for all of its own costs, including without limitation the costs of experts appointed pursuant to clause 7.2.4.

#### **6.15 accounts and reports**

The Trustees shall keep proper records affecting the affairs of the Trust and the administration of the Trust funds and shall prepare annual statements of account and shall ensure that the accounts and records are audited by the Auditors.

The accounts of the Trust shall reflect that the administration and management of the Gefco / Msauli Settlement Amounts and the Gencor Settlement Amount are kept separate and distinct from each other. The purpose of this separation is to ensure that, save for Qualifying Claimants with mesothelioma and asbestos related lung cancer, the Gencor Settlement Amount is not utilised to compensate persons who in the course of their employment had exposure to asbestos dust at a Qualifying Operation/s outside of the Qualifying period and *vice versa*. In addition, the separation will facilitate the keeping of true and proper records for the purpose of reporting on the awards made out of the Gencor and Gefco / Msauli Settlement Amounts respectively.

The Trustees shall produce an annual report (which shall be a public document) which shall incorporate (but not be limited to) the audited annual statements of account, together with information relating to:

the number of Qualifying Claimants who received an award from the Trust during the preceding year;

the amount of all awards so made, including whether such award was made from the Gefco / Msauli Settlement Amount or the Gencor Settlement Amount respectively; and

the fees, expenses, disbursements and emoluments charged to, paid or incurred by or on behalf of the Trust.

### **7. Power of the Trustees**

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 unmarried major person, including the power to sue and be sued.

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

receive all claims from Qualifying Claimants who are proved to have ARDs in the circumstances as set out in this Deed;

make awards to Qualifying Claimants who meet all the qualifying criteria specified in this Deed;

receive and accept donations, settlements or awards from any party in relation to damages and compensation for ARD suffered by Qualifying Claimants on such terms and conditions as they may determine, including, without limitation, the Gefco Settlement Amount, the Msauli Settlement Amount and the Gencor Settlement Amount;

appoint experts in every field thereto to enable them to fulfil their mandate;

be paid their reasonable expenses, as well as a reasonable fee for acting as Trustees;

pay the amounts provided for in clauses 13.1.1 and 13.1.2 below to NNS;

issue the relevant indemnities referred to in clauses 13.1.3, 13.1.4, 13.1.5 and 13.1.6 below;

comply with the terms of the Settlement Agreement;

undertake or support special projects and programmes referred to in clause 14 below;

determine and prescribe (subject to the provisions of this Deed):

the establishment of the administrative mechanisms required by the Trust;

the process which the Trust will follow in order to invite potential claims and the form in which claims are to be submitted;

the process for evaluating claims;

the manner in which the Trust will be prepared to consider additional payments to defray claimants' costs in pursuing claims, including the consideration of maintaining a panel of approved organisations to whom it will authorise payment where appropriate. The Trustees will establish conditions of admission to any panel, including but not limited to provisions to ensure that no member (of such panel) obtains payments for

dealing with any claim (whether or not successful) other than from the Trust, provided that the Trust may only make payments towards the cost of successful claimants, and further, that in respect of successful claimants who are not assisted in lodging a claim, the costs shall not exceed their expenditure reasonably incurred;

the process for the payment of any awards or payments;

the guidelines for the determination of the quantum of claims;

such research (including epidemiological and actuarial research) as may be reasonably required to achieve the Primary Object;

the nature and level of support to be given to social programmes provided for in this Deed;

invest assets of the Trust or any portion thereof in such manner as the Trustees deem proper. Without detracting from the generality of the foregoing, they will be entitled (but not limited) to invest in any assets, movable, immovable, corporeal or incorporeal; shares in private and public companies; banks and other financial institutions and in Government, parastatal or municipal stocks anywhere in the world. They will further be entitled to convert, vary or realise any investments in their discretion and re-invest any proceeds;

in their discretion jointly to exercise the voting power attached to any shares belonging to the Trust and which are held in any company;

accept donations and bequests made to the Trust;

create separate Trusts substantially in accordance with the terms of this Trust Deed for the benefit of any of the beneficiaries and to transfer income and/or capital from this Trust to such separate Trust(s) in which event the Trustees may determine, in their discretion, that the interests of any such beneficiaries in this Trust shall cease;

enter into contracts;

grant mortgages, pledges and cessions as security and arrange for the issue of bank guarantees; and

accept, administer and make awards of such additional monies as may be donated or secured to the Trust by any person, for the purpose of compensating other ARD claimants on such terms and conditions as the Trustees may agree, provided that this does not accrue to the prejudice of the qualifying claimants herein.

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 clause 13 below.

## **8. Beneficiaries**

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

The Cape Claimants (as defined in the Settlement Agreement), their estates and/or their dependants are expressly precluded from participating in any way and/or to any extent as beneficiaries under or in respect of Trust.

To the extent that upon the expiry of the life of the Trust, there are any assets left within the Trust, the residual Beneficiaries of the assets and income of the Trust shall be any charitable organisation having as one of its principal objects the promotion of the welfare of persons or communities detrimentally affected by asbestos mining.

## **9. Possession and ownership of the assets of the Trust**

Subject always to the provisions of clause 7:

all assets acquired and all liabilities incurred by the Trustees in their capacity as Trustees, shall vest in the Trustees in their capacity as such, and shall be administered by the Trustees as a separate fund, namely the trust fund, provided that the administration and management of the Gencor Settlement Amount shall be kept separate and distinct from the administration and management of the Gefco / Msauli Settlement Amount as set out in clause 6.15.2;

subject to clause 9.1.4, 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;

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; and

the assets of the Trust and the income of the Trust shall be owned by the Trustees, in their capacity as such, and the beneficiaries shall have no rights to such assets and/or income, save as Beneficiaries of the Trust.

## **10. Duration and termination**

The Trust shall endure for a period of 25 years from the date of registration by the Master of the High Court, provided that the Trustees, having regard to the Primary Object, and the interests of the initial Beneficiaries and the residual Beneficiaries may reduce or extend the life of the Trust by 5 years.

If the resolute conditions in clauses 3.1, 5.1.2 and 7.1.2 of the Settlement Agreement do occur, the Trust shall be wound up automatically.

## **PART III: Payment Administration**

### **11. Awards by Trustees**

#### **11.1 payment from the Trust funds**

The Gencor Settlement Amount paid to the Trust by Gencor will be utilised by the Trustees to make awards to the following categories of Qualifying Claimants:

all persons who have contracted an ARD with a lung function impairment whom the Trustees are satisfied had occupational exposure to asbestos dust at any of the Qualifying Operations solely during the Qualifying Period;

all persons who have contracted an ARD with a lung function impairment whom the Trustees are satisfied had environmental (non-occupational) exposure to asbestos dust in the vicinity of any of the Qualifying Operations and who have no prior history of any occupational exposure to asbestos dust at any time;

all persons who have contracted mesothelioma or asbestos related lung cancer whom the Trustees are satisfied had occupational exposure to asbestos dust at any of the Qualifying Operations partly during the Qualifying Period and partly outside of the Qualifying Period;

the dependants of persons who have died and a cause of death is mesothelioma or asbestos related lung cancer in circumstances where the Trustees are satisfied that the deceased had asbestos dust exposure at a Qualifying Operation or, as the case may be, environmental exposure to asbestos dust in the vicinity of any of the Qualifying Operations and who had no prior history of any occupational exposure to asbestos dust at any time;

The Gefco Settlement Amount and/or the Msauli Settlement Amount paid to the Trust by Gefco and Msauli will be utilised by the Trustees to make awards to:

those Qualifying Claimants who contracted an ARD with a lung function impairment whom the Trustees are satisfied had occupational exposure to asbestos dust at any one of the Qualifying Operations solely outside of the Qualifying Period;

Qualifying Claimants who have contracted an ARD with lung function impairment (other than mesothelioma or asbestos related lung cancer) and who the Trustees are satisfied were exposed to asbestos dust at any one of the Qualifying Operations partly during the Qualifying Period and partly outside of that period will be entitled to receive awards from the Gencor Settlement Amount and the Gefco / Msauli Settlement Amount on an apportioned basis. The Trustees, in apportioning the award (and assessing the relevant contribution to be made from each of the amounts paid by Gencor and Gefco/Msauli to the Trust), shall have regard to the time any such claimant spent in occupation at a Qualifying Operation during the Qualifying Period and any periods spent in occupation either prior to or after that period, as well as the levels of asbestos dust and/or fibre to which those persons were exposed or were likely to have been exposed during those periods; for example and in relation to the time spent in occupation, if the qualifying claimant had a total exposure of 10 years, 4 of which fell during the Qualifying Period and 6 of which fell outside of that period, then, all other things being equal, the amount paid to the Trust by Gencor would contribute 40% towards the award and the amount paid to the Trust by Gefco/Msauli would contribute 60% towards the award.

After the expiration of a period of 20 years from the date of registration of the Trust, the distinction between the Qualifying Period and any other period will fall away and the Trustees shall be permitted to amalgamate the balance if any, then remaining of the amount paid to the Trust by Gencor and the amount paid to the Trust by Gefco/Msauli;

In the case of any claimant whose claim was registered with NNS/Brasg prior to the date of the Agreement of Settlement, the date their claim/s was so registered shall be deemed as being the date of submission of their claim to the Trust.

## 11.2 **diseases**

### 11.2.1 **Occupational and Environmental Claimants**

Occupational Claimants and Environmental Claimants shall only be entitled to compensation for the following types of ARD:

mesothelioma;

asbestosis;

asbestos related lung cancer; and/or

asbestos related pleural thickening.

Compensation shall only be awarded in circumstances where the ARD has caused lung function impairment.

For the avoidance of any doubt, Occupational Claimants and Environmental Claimants shall not be entitled to compensation for asymptomatic asbestos related pleural plaques.

### **11.2.2 Dependants' Claimants**

The dependants and/or the executors of the estate of persons who have died within a period of 3 (three) years prior to the lodging of their claim/s with the Trust for an award for mesothelioma or asbestos related lung cancer contracted as a result of occupational or environmental exposure to asbestos dust from the Qualifying Operations shall be entitled to make application to the Trust; provided that in the case of any Dependant Claimant whose claim was registered with NNS or Brasg prior to the date of the Agreement of Settlement, 5 years shall be substituted for 3 years in the definition of "Dependant Claimant" in clause 1.1.13.

For the avoidance of any doubt, Dependant Claimants shall not be entitled to compensation, unless a cause of death was mesothelioma or asbestos related lung cancer, as the case may be.

No Dependant/s Claim shall be accepted by the Trustees in circumstances where the deceased had previously made a claim in relation to mesothelioma and/or asbestos-related lung cancer and that claim had been accepted by the Trustees.

In making awards to Dependant Claimants, the Trustees shall procure a written warranty and undertaking from the Dependant Claimant stating that he/she is the true representative of the estate and/or dependants and that payment to him/her 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. 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;

Dependant claimants shall only be entitled to an award in respect of loss of support and not any other damages;

Any living claimant who submits a claim and is subsequently diagnosed as suffering from mesothelioma or asbestos related cancer whether before or after death shall be treated as a live claimant, and the provisions of 11.2.2.5 shall not apply.

### **11.2.3 proof of exposure**

The Trustees shall be obliged to determine to their reasonable satisfaction, the full extent of any claimants (including the deceased's in the case of Dependants' Claimants) exposure to asbestos dust by reference to Qualifying and non-Qualifying Operations and whether that exposure was during the Qualifying Period, pre or post the Qualifying Period, or otherwise:

Occupational Claimants shall, save in exceptional circumstances only, be required to furnish documentary proof of employment. Such documentary proof of employment shall include but not be limited to reference in the records of the MBOD or CCOD, to employment at a Qualifying Operation, any other work record, Government Department record, medical record, wage slip or pay advice identifying the Qualifying Claimant, and any other certificate or document originating from a Qualifying Operation, including a stamped reference book or list of employees which identifies the Qualifying Claimant as having been an employee of, or worker at, a Qualifying Operation during the Qualifying Period.

Environmental Claimants shall be required to furnish proof of residence at or near a Qualifying Operation as well as the period of such residence thereat together with suitable medical evidence confirming that environmental exposure to asbestos dust at such residence was likely to have materially contributed to the ARD. The Trustees shall be required to receive and take into account evidence as to the distance resided from the relevant Qualifying Operation, likely sources of asbestos dust exposure or other asbestos mines or mills, length of time resided there, dates of residence and full occupational history and such scientific and official data relating to environmental dust levels as are obtained or made available to it.

Dependant Claimants shall, in the case of claims made on behalf of persons who contracted and died from mesothelioma or asbestos related lung cancer as a result of occupational exposure, be required to comply with the provisions of clause 11.2.3.2 above in order to satisfy the Trust that the deceased had employment in a Qualifying Operation and in the case of claims made on behalf of persons who contracted



mesothelioma or asbestos-related lung cancer as a result of environmental (non-occupational) exposure and died as a result, be required to comply with the provisions of clause 11.2.3.3 above in order to satisfy the Trustees that the deceased had environmental exposure;

The same principles of apportionment set out in 11.1.3 will apply to the apportionment of exposure to asbestos dust as between Qualifying Operations and non-Qualifying Operations;

In the case of any claim (environmental or otherwise) based on the development of mesothelioma or asbestos related lung cancer, no account shall be taken of any asbestos dust exposure in the 10 (ten) years prior to death.

### **11.3 proof of disease**

A Qualifying Claimant shall be required to satisfy the Trustees, acting reasonably in the circumstances, that he/she has contracted one of the relevant diseases referred to in 11.2.1.1 above (Occupational Claimants and Environmental Claimants) or that the deceased has died and a cause of death was mesothelioma or asbestos related lung cancer as referred to in 11.2.2 above (Dependant Claimants).

As a general rule and in relation to asbestosis and pleural thickening, the Trustees will require such information as they deem necessary to make a firm diagnosis of diseases and a proper assessment of lung function impairment which shall reasonably include:

a good quality postero-anterior 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 long form ILO classification system, such report to have been completed and signed by a qualified radiologist;

the results of lung function tests (in which any reduction in vital capacity (restriction) and spirometry (FEV1 and FVC) is recorded) and upon which an assessment is made by a qualified pulmonologist as to the impairment/disability associated with the ARD; and

the results or the records of a clinical examination; and

a history of asbestos dust exposure.

Such medical evidence shall be submitted to and considered by a doctor or doctors appointed by the Trustees for the purpose of diagnosis or confirmation of diagnosis.

The decision of such doctor or doctors on medical issues shall be final and binding on the Claimant(s).

In circumstances where a definitive diagnosis is not capable of being made on the basis of the information above and/or in cases where any lung function impairment may be attributable either wholly or in part to other non-asbestos related lung disease (for example, tuberculosis, the effect of smoking/emphysema, silicosis and the like) the Trustees may in their discretion require any Qualifying Claimant to undergo such further examinations as they deem appropriate, including HRCT scanning in order to quantify and differentiate the various aspects of asbestos and non-asbestos related lung disease to assist them in determining the claim.

As a general rule and in relation to mesothelioma and asbestos related lung cancer, the Trustees shall be required to receive such information as they require to make a firm diagnosis, which shall reasonably include:

a good quality postero-anterior X-ray film of any Qualifying Claimant's lungs and/or a report describing the findings, such report to include classification of the X-ray film, according to the ILO system of any accompanying asbestos related benign lung or pleural disease;

a pathological report prepared pursuant to:

a cytological examination of a pathological sample, for example, of pleura or lung tissue or fluid; and/or

a biopsy;

the results or the records of a clinical examination (provided that in the case of a Dependant Claimant, such an examination had been performed during the life time of the deceased); and

a history of asbestos dust exposure.

Such medical evidence shall be submitted to and considered by a doctor or doctors appointed by the Trustees for the purpose of diagnosis or confirmation of diagnosis. The decision of such doctor or doctors on medical issues shall be final and binding on the Claimant/s.

## **12. Terms of any award**

The following principles together with any other principles which the Trustees may deem appropriate will apply to the terms of any award made by the Trustees to Qualifying Claimants:

subject to what is set out in clause 12.1.6 below, no award of any nature shall be made until six months after the date on which the Trust has been registered during which period the Trustees will determine the quantum of the awards for damages and the formulae or criteria for damages on the basis of expert advice obtained in order to fulfil the Primary Object;

A Qualifying Claimant who has been paid an award for asbestosis or pleural thickening and who is subsequently diagnosed with mesothelioma or asbestos related lung cancer, or the Dependants of such a person who has died and a cause of death was mesothelioma and/or asbestos-related lung cancer may re-apply for the higher level of award associated with mesothelioma or asbestos related lung cancer (as the case may be) and, if all of the qualifying criteria are met, then (subject to 11.2.2 in the case of Dependant Claimants) will qualify to be paid the difference between the higher award (at the time of their re-application) and the award which the Qualifying Claimant had previously received for the less serious form of ARD. In the case of any re-application under the provisions of this clause, a Qualifying Claimant will not be required to (again) furnish evidence of exposure to asbestos dust;

the Trustees shall review the operation of the Trust and payments made under it within 3 years of the commencement by them of payments other than provisional payments to mesothelioma and asbestos-related lung cancer claimants. They may, if that review warrants it, make further payments to those who have so far been paid a sum to provide total payments to those persons at a gross level not in excess of the equivalent level at which payments are thereafter set. Any further payment shall be in the absolute discretion of Trustees and there shall be no obligation on them to make further payments even if they resolve to make increased payments thereafter;

save for the provisions of 12.1.2, 12.1.3, 12.1.6 and 12.1.7 all awards will be once-off lump sum payments, and no claimant may be paid more than one award by the Trust;

all awards for general damages made by the Trust will be based on lung function impairment:

in the case of mesothelioma and asbestos related lung cancer, the lung function impairment shall be deemed to be 100%;

in the case of asbestosis and pleural thickening, two categories of lung function impairment shall be recognised – a condition which results in lung function impairment of between 10% and 40% and a condition which results in lung function impairment of 40% or greater.

Notwithstanding 12.1.1 above and in the period referred to therein, a person suffering from mesothelioma or asbestos related lung cancer who the Trustees are reasonably satisfied is a Qualifying Claimant shall be entitled to apply for a preliminary award in an amount, on terms and subject to criteria to be determined by the Trustees. A Qualifying Claimant who has been paid a preliminary award for mesothelioma or asbestos related lung cancer shall be paid a supplementary award if all of the qualifying criteria are met, amounting to the difference between what he or she would ordinarily be entitled to and the preliminary award which the Qualifying Claimant had previously received.

The Trustees shall be permitted in their sole and absolute discretion to make interim awards pending the determination of a claim, but only in the case of claims by living claimants whom the Trustees are satisfied, in accordance with the provisions of this Deed, suffer from mesothelioma and/or asbestos-related lung cancer. No payment/award will be made under this clause unless the person receiving the payment/award is alive at the date payment is made.

The Trustees shall be afforded a broad discretion, within the parameters of the expert advice received, to determine and apply appropriate principles and/or formulae and/or tariffs of benefits for the payment to Qualifying Claimants of compensation for both their general and special damage, provided that awards for special damages shall be paid only in respect of medical expenses and/or loss of earnings or support. The Trustees may exercise their discretion by making standard awards inclusive of general and special damages to the extent that this can be achieved in a manner consistent with the Primary Object of the Trust.

Save for Qualifying Claimants with mesothelioma and/or asbestos related lung cancer, the Trustees must apportion any award in respect of both general and special damages having regard, inter alia to:

other asbestos dust exposures (i.e. exposure to asbestos dust other than from the Qualifying Operations and/or before and/or during and/or after the Qualifying Period unless, in the case of Occupational Claimants, that exposure is environmental exposure derived solely from a Qualifying Operation); and

other non-asbestos related lung disease which may have contributed to the lung function impairment (i.e. tuberculosis, the effect of smoking/emphysema, silicosis and the like).

In apportioning the awards (as referred to in 12.1.9 above) the following principles (together with any other principles which the Trustees may deem appropriate) shall apply:

the contribution (expressed as a percentage) which any non-asbestos related lung disease has made to the lung function impairment, shall be deducted from any award; and

the contribution (expressed as a percentage of overall exposure), which asbestos dust exposure other than at a Qualifying Operation has made to the lung function impairment shall be deducted from any award.

In making any award the Trustees shall deduct from special damage, or from the amount of any standard award relating to special damage 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. The Trustees shall also deduct from special damage or from the amount of any standard award relating to special damage, any amount which has been received by the Qualifying Claimant by way of insurance, medical aid or other medical payments relating to the ARD and/or its treatment, palliative or otherwise, to which their claim relates.

In making awards to Dependant Claimants, the Trustees shall take into account:

any benefits which the dependant/s received in their capacity as beneficiary/ies, and shall (as in 12.1.11) deduct these benefits from any special damage award or from the amount of any standard award relating to special damage;

awards made to the deceased for asbestosis and/or pleural thickening prior to his/her death; and shall deduct the amount of any such award/s previously made from the amount of any award the Trustees may determine becomes due and payable to the Dependant Claimants.

The Trustees shall have the power to review the formulae and/or tariffs of benefits for the payment to Qualifying Claimants of compensation for their general and special damages on a periodic basis (which shall not be more than once a year) and depending on their assessment of the likelihood and value of future claims and,

conscious of the life of the Trust, may adjust the formulae and/or tariffs appropriately. Subject to 12.1.3, any formula and/or tariff adjustment shall not be retrospective, and any Qualifying Claimant who has received an award prior to any such adjustment shall not be entitled to benefit from any further award in the event that the formulae and/or tariffs are increased nor shall that claimant be obliged to repay any amounts to the Trust in the event that the formulae and/or tariffs are reduced.

Subject to the payment by Gencor and/or Gefco and/or Msauli of their respective Settlement Amounts, the Trustees shall ensure that no award is made to any Qualifying Claimant unless and until the said Qualifying Claimant has furnished and signed a written agreement and undertaking of release and discharge (in the prescribed form) in favour of the party/ies (and it/their Group) that has made payment. Depending upon the identity of the party/ies that has made a payment of its Settlement Amount, the release and discharge may take one of the following prescribed forms:

a release and discharge in favour of Gencor and the Gencor Group (annex "A1");

a release and discharge in favour of Gencor, the Gencor Group, Gefco and the Gefco Group (annex "A2");

a release and discharge in favour of Gencor, the Gencor Group, Msauli and the Msauli Group (annex "A3");

a release and discharge in favour of Gencor, the Gencor Group, Gefco, the Gefco Group, Msauli and the Msauli Group (annex "A4");

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

The Trustees acknowledge and accept that the Trust is bound by the terms and conditions of the Settlement Agreement insofar as they relate to or are connected with the Trust. Without derogating from the generality hereof:

immediately upon receipt by the Trust of any or all amounts paid to it by or on behalf of Gencor (as provided for in the Settlement Agreement), the Trust shall pay to NNS an amount of R11 495 000,00 together with the interest which had accrued on this amount pursuant to its investment in the contribution to costs account referred to in the Settlement Agreement;

immediately upon receipt by the Trust of any or all amounts paid to it by or on behalf of Gefco and/or Hanova (as provided for in the Settlement Agreement), the Trust shall pay to NNS an amount of R500 000,00 together with the interest which had accrued on this amount pursuant to its investment in the Gefco contribution to costs account

referred to in the Settlement Agreement. Immediately upon receipt by the Trust of any or all amounts paid to it by or on behalf of Msauli and/or ACA (as provided for in the Settlement Agreement), the Trust shall pay to NNS an amount of R250 000,00 together with the interest which had accrued on this amount pursuant to its investment in the Msauli contribution to costs account referred to in the Settlement Agreement;

if the resolute condition referred to in clause 3 of the Settlement Agreement does not occur by 30 June 2003 or such later date as may be agreed between NNS and Gencor, the Trustees shall within 5 days from that date, furnish Gencor and the Gencor Group with a written indemnity indemnifying Gencor and/or the members of the Gencor Group and holding them or any one of them, as the case may be, harmless from and against all costs reasonably incurred by them or any one of them, as the case may be, in relation to any legal proceedings issued against them jointly or severally by any one or more of the alleged dependants and/or estates of Kubari or Lombaard or Ncheyagae and from and against all awards and/or damages and/or costs and/or expenses relating thereto, including any settlements and/or compromises of any claims which the said dependants and/or estates may have;

if the Gefco resolute condition referred to in clause 5.1.1 of the Settlement Agreement does not occur by 15 May 2003 (or such later date as may be agreed between NNS and Gefco), or if the Gefco resolute condition in clause 5.1.2 of the Settlement Agreement does not occur by 30 June 2003 (or such later date as may be agreed between Gencor and NNS), the Trustees shall within 5 days furnish Gefco and the members of the Gefco Group and Hanova with a written indemnity indemnifying Gefco and the members of the Gefco Group and Hanova and holding them or any one of them, as the case may be, harmless from and against all costs reasonably incurred by them or any one of them, as the case may be, in relation to any legal proceedings issued against them jointly or severally by any one or more of the alleged dependants and/or estates of Kubari or Lombaard or Ncheyagae and from and against all awards and/or damages and/or costs and/or expenses relating thereto, including any settlements and/or compromises of any claims which the said dependants and/or estates may have;

if the Msauli resolute condition referred to in clause 7.1.1 of the Settlement Agreement does not occur by 15 May 2003 (or such later date as may be agreed between NNS and Msauli), or if the Msauli resolute condition referred to in clause 7.1.2 of the Settlement Agreement does not occur by 30 June 2003 (or such later date as may be agreed between Gencor and NNS), the Trustees shall within 5 days furnish Msauli and the members of the Msauli Group and ACA with a written indemnity

indemnifying Msauli and the members of the Msauli Group and ACA and holding them or any one of them, as the case may be, harmless from and against all costs reasonably incurred by them or any one of them, as the case may be, in relation to any legal proceedings issued against them jointly or severally by any one or more of the alleged dependants and/or estates of Kubari or Lombaard or Ncheyagae and from and against all awards and/or damages and/or costs and/or expenses relating thereto, including any settlements and/or compromises of any claims which the said dependants and/or estates may have;

immediately upon receipt of a Related Proceedings Notice (as that term is defined in the Settlement Agreement), indemnify the affected parties and hold them or any one of them, as the case may be, harmless from any debts or costs reasonably incurred by them or any one of them, as the case may be, in relation to legal proceedings and from and against all awards and damages in such legal proceedings and/or settlements and/or compromises of the said proceedings, as more fully described in clause 12 of the Settlement Agreement;

the Trust shall receive, consider and reasonably approve any request made by Gencor that any Rehabilitation Claim (as defined in the Settlement Agreement) should be settled. For the avoidance of doubt, the Trust's approval shall only be required if the settlement requires the use of the funds (or a portion thereof) in the rehabilitation claw back account (as defined in the Settlement Agreement).

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:

if any award is made, he will sign a written agreement and undertaking of release and discharge in the form of one of annexes "A1" to "A4" as the case may be (as referred to more fully in clause 12.1.4 ("**the waiver**"));

the decision of the doctors and/or medical panel appointed by the Trust on all medical matters relating to the application shall be final and binding on the applicant;

if any dispute arises between the applicant and the Trust in relation to his application, the Trust's adjudication and/or decisions made in respect of the application and/or any awards made or not made by the Trust pursuant to such application, such dispute shall be decided by arbitration in accordance with the provisions of clause 23 of the Settlement Agreement *mutatis mutandis*.



the Trustees acknowledge and accept that the Trust is the duly appointed agent of Gencor, Gefco and Msauli for the purposes of the acceptance of the benefits conferred upon those companies under and in terms of the waiver and that they are obliged to and will sign (and accept on their behalf) such waiver after the completion and signature of an application form, all as more fully described in clause 13.2.

#### **14. Social Projects**

Ten percent of all interest accruing on Trust investments shall be available, at the Trustees sole discretion, to undertake or support projects and programmes including, but not confined to:

the prevention of asbestos related diseases;

the provision and/or extension of support of a non-financial nature to persons suffering from ARDs; and

the provision of information and advice services to persons and families of persons affected by ARDs, care givers and medical practitioners.

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

#### **15. Governing Law**

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

#### **16. Divisibility**

Each clause of this Deed 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.

#### **17. 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.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2006.

**Witness:** \_\_\_\_\_ for **Gencor Limited**

.....  
**who warrants his authority thereto**

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2006.

**Witness:** \_\_\_\_\_ for **The Griqualand Exploration and Finance Company Limited**

.....  
**who warrants his authority thereto**

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2006.

**Witness:** \_\_\_\_\_ for **Msauli Asbes Beperk**

.....  
**who warrants his authority thereto**

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2006.

**Witness:** \_\_\_\_\_ for **First Trustee – Maitland Trust Limited**

.....  
**who warrants his authority thereto**