

## **Amendment and Restatement Agreement**

**IN RESPECT OF**  
**THE SIBANYE RUSTENBURG MINE COMMUNITY DEVELOPMENT TRUST**  
**(PREVIOUSLY KNOWN AS THE RUSTENBURG MINE COMMUNITY DEVELOPMENT**  
**TRUST)**

entered into between

**SIBANYE PLATINUM PROPRIETARY LIMITED**

(Registration Number 2014/243820/07)

represented by

**CHARL KEYTER**

(Identity Number 731009 5119 08 3)

(as the **Founder**)

AND

**GRANT MICHAEL STUART**

(Identity Number 720920 5074 081)

and

**KGOMOTSO MMATHUTO MOLEBATS**

(Identity Number 820903 0572 084)

and

**THABISILE CHARITY PHUMO**

(Identity Number 730804 0302 085)

and

**THEMBA GEORGE NKOSI**

(Identity Number 730114 5253 089)

(collectively the **Trustees**)

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## INTRODUCTION

- A** The Founder created the Trust as a BBBEE vehicle through which primarily Black Persons who are members of the Community will derive benefits from the Company, which Company in turn holds shares in SRPM
- B** The First Trustees were appointed in terms of Letters of Authority dated 27 January 2016. After this date, the Trust became the registered and beneficial owner of the Community Trust Shares.
- C** The First Trustees have subsequently resigned, and new Trustees were appointed in terms of Letters of Authority dated 31 July 2019.
- D** The Founder and the Trustees have agreed in writing to amend and restate the Original Trust Deed in accordance with provisions of clauses 2.8 and 25.3 thereof, in order to:
- 1) change the name of the trust to avoid confusion with other community trusts active in the Rustenburg Area;
  - 2) accommodate the requirements of SARS in respect of the Trust's application for Income Tax Exemption; and
  - 3) improve the day to day administration of the Trust.

## IT IS AGREED

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. Terms defined in the Trust Deed (as defined below) have the same meaning in this Agreement, unless given a different meaning in this Agreement.
- 1.2. In this Agreement:
- 1.2.1. **Effective Date** means the date of last signature of this Agreement by the Parties thereto, or such later date as may be approved by the Master of the High Court;
  - 1.2.2. **Trust** means the Rustenburg Mine Community Development Trust, IT000198/2016(T), constituted in terms of the Original Trust Deed, as amended and restated in terms of this Trust Deed, to be renamed the Sibanye Rustenburg Mine Community Trust pursuant to the provisions of this Agreement;
  - 1.2.3. **Trust Deed** means the amended and restated trust deed of the Trust including any annexures thereto attached hereto as **Schedule 1**

*(Amended and Restated Trust Deed Of The Sibanye Rustenburg Mine Community Development Trust (previously known as The Rustenburg Mine Community Development Trust));*

1.3. The interpretation provisions of the Trust Deed apply *mutatis mutandis* to this Agreement.

## 2. **AMENDMENT AND RESTATEMENT OF THE TRUST DEED**

With effect from the Effective Date, the Parties agree that:

2.1. the name of the trust shall be changed to '**THE SIBANYE RUSTENBURG MINE COMMUNITY DEVELOPMENT TRUST**';

2.2. the Trust shall be amended and restated in the form of the Trust Deed so that the Parties' rights and obligations shall be read and construed for all purposes in accordance with the amended and restated terms and conditions as set out in Trust Deed.

2.3. the amendment and restatement of the Trust Deed pursuant to this Agreement shall constitute a variation of the Original Trust Deed in accordance with Contract in accordance with clauses 2.8 and 25.3 of the Original Trust Deed, and shall at all times be subject to the provisions of clause 25.5 of the Original Trust Deed.

2.4. any reference in any other relevant transaction or other documents which contain references to the Trust shall be read and construed as references to the Trust Deed as amended and restated by this Agreement.

## 3. **GENERAL**

3.1. This Agreement constitutes the sole record of the agreement amongst the Parties in regard to the subject matter thereof.

3.2. To the extent permissible by law, no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether or not it induced this Agreement and/or whether it was negligent or not.

3.3. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

4. **SEVERABILITY**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it had never been written (*pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

5. **GOVERNING LAW**

This Agreement shall be governed by, determined, interpreted and construed in accordance with the laws of South Africa.

***[THE NEXT PAGE IS THE SIGNATURE PAGE]***

**SIBANYE PLATINUM PROPRIETARY LIMITED**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**GRANT MICHAEL STUART**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**KGOMOTSO MMATHUTO MOLEBATSI**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**THABISILE CHARITY PHUMO**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**THEMBA GEORGE NKOSI**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**SCHEDULE 1 (AMENDED AND RESTATED TRUST DEED OF THE SIBANYE  
RUSTENBURG MINE COMMUNITY DEVELOPMENT TRUST (PREVIOUSLY KNOWN AS  
THE RUSTENBURG MINE COMMUNITY DEVELOPMENT TRUST))**

**AMENDED AND RESTATED TRUST DEED OF**  
**THE SIBANYE RUSTENBURG MINE COMMUNITY DEVELOPMENT TRUST**  
**(PREVIOUSLY KNOWN AS THE RUSTENBURG MINE COMMUNITY DEVELOPMENT**  
**TRUST)**

entered into between

**SIBANYE PLATINUM PROPRIETARY LIMITED**  
(Registration Number 2014/243820/07)

**REPRESENTED BY**  
**CHARL KEYTER**  
(Identity Number 731009 5119 08 3)  
(as the **Founder**)

and

**GRANT MICHAEL STUART**  
(Identity Number 720920 5074 081)

and

**KGOMOTSO MMATHUTO MOLEBATSI**  
(Identity Number 820903 0572 084)

and

**THABISILE CHARITY PHUMO**  
(Identity Number 730804 0302 085)

and

**THEMBA GEORGE NKOSI**  
(Identity Number 730114 5253 089)  
(Collectively the **Trustees**)



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## 1. INTRODUCTION

- 1.1. Sibanye Rustenburg Platinum Mines Proprietary Limited (**SRPM**) was restructured during 2016 in the manner described in the Steps Document.
- 1.2. As part of the Steps outlined in the Steps Document, the Founder created the Trust as a BBBEE vehicle through which primarily Black Persons who are members of the Community will derive benefits from the Company, which Company in turn holds shares in SRPM.
- 1.3. The First Trustees were appointed in terms of Letters of Authority dated 27 January 2016. After this date, the Trust became the registered and beneficial owner of the Community Trust Shares.
- 1.4. The First Trustees have subsequently resigned, and new Trustees were appointed in terms of Letters of Authority dated 31 July 2019.
- 1.5. The Founder and the Trustees have agreed in writing to amend the Original Trust Deed in accordance with provisions of clauses 2.8 and 25.3 thereof, in order to:
  - 1.5.1. accommodate the requirements of SARS in respect of the Trust's application for Income Tax Exemption; and
  - 1.5.2. improve the day to day administration of the Trust.

## PART I – INTERPRETATION PROVISIONS

### 2. DEFINITIONS AND INTERPRETATION

#### 2.1. Definitions

In this Trust Deed, except to the extent that the context requires otherwise:

- 2.1.1. **Act** means the Trust Property Control Act, 1988;
- 2.1.2. **Administrative Costs** means all lawful, reasonable and necessary costs, charges, expenses and tax (if any) incurred by the Trustees and/or the Administrator on behalf of the Trust in connection with the management and administration of the Trust including, if for any reason the Trustees are at any time required to furnish security, the costs from time to time of furnishing such security, their remuneration and any tax that may become payable by them in their representative capacity in respect of the income

of the Trust; **provided that** the Administrative Costs shall be limited to a maximum of 15% (fifteen percent) of the Trust Income in any Financial Year of the Trust, unless the prior Written consent of the Founder has been obtained;

- 2.1.3. **Administrator** means a Person appointed by the Trustees pursuant to clause 17.2.1 below to assist with the administration of the Trust in accordance with the provisions of this Trust Deed and the Operating Model, **provided that** where any reference is made to the Administrator undertaking any actions on behalf of the Trust, but no such Administrator is appointed, this Trust Deed shall be read as requiring the Trustees to undertake such actions on behalf of the Trust;
- 2.1.4. **AFSA** means the Arbitration Foundation of Southern Africa and its successors in title;
- 2.1.5. **AFSA Secretariat** means the body of persons and/or arbitrator appointed by AFSA;
- 2.1.6. **Allocated Portion** shall have the meaning ascribed to it in clauses 20.2.2 below and/or 21.6 below, as the case may be;
- 2.1.7. **Auditors** means a duly qualified and certified independent auditors appointed by the Founder and holding office as the auditors of the Trust from time to time;
- 2.1.8. **Bank** means any commercial bank carrying on business as such in South Africa, or such other bank as may be approved by the Founder in Writing;
- 2.1.9. **BBBEE** has the meaning ascribed to that term under the BBBEE Act and related BBBEE Legislation;
- 2.1.10. **BBBEE Act** means the Broad-Based Black Economic Empowerment Act, 2003;
- 2.1.11. **BBBEE Legislation** means the broad-based black economic empowerment requirements applicable to the Trust and/or the Founder, as set out in the Codes, the BBBEE Act and the MPRDA, as the case may be;
- 2.1.12. **Beneficiary** shall include:

- 2.1.12.1. Black Persons who are members of the Community from time to time;
- 2.1.12.2. any trust and/or juristic entity which has as its aim and/or objective (or its principal aim and/or objective) the advancement of the social, economic, educational and developmental interests of Black Persons within the Community, provided always that at least 85% (eighty five percent) of the benefits derived from, distributed or accruing to any Persons from such trust and/or juristic entity, whether by way of a distribution, dividend or otherwise, must accrue to Black Persons; and
- 2.1.12.3. any other members of the Community who are not Black Persons, provided that the Trustees shall only be entitled to vest a maximum of 15% (fifteen percent) of the Trust Capital in such other members of the Community in terms of this Trust Deed from time to time,

identified in accordance with the provisions of Part IV – Beneficiaries (if and to the extent relevant);

- 2.1.13. **Black Person** means the most restricted definition from time to time ascribed to it in either of the BBBEE Act or the Codes, and which as at the Registration Date is the definition contained in the BBBEE Act, as read with the Codes, namely the generic term which means Africans, Coloureds, Indians and Chinese of South African descent, qualified as including only natural persons, and the term "**Black**" shall have a corresponding meaning;
- 2.1.14. **Business Day** means any Day, except a Saturday, Sunday or official public holiday in South Africa;
- 2.1.15. **Change in Law** shall have the meaning ascribed to it in clause 29.2 below;
- 2.1.16. **Charter** means the Broad Based Socio Economic Empowerment Charter for the South African Mining Industry, as in force from time to time;
- 2.1.17. **Codes** means the Codes of Good Practice on Broad Based Black Economic Empowerment, published in terms of section 9(1) of the BBBEE Act and any other applicable sectoral code of good practice published in

the Government Gazette in terms of the aforementioned Codes, including but not limited to the Charter;

- 2.1.18. **Commissioner** means the Commissioner for SARS;
- 2.1.19. **Committee** means any duly constituted committee (but excluding the Conflict Resolution Committee) appointed by the Founder and the Trustees, consisting of at least 2 (two) persons who are not Connected Persons in relation to any Beneficiary of the Trust;
- 2.1.20. **Community** means the persons who are inhabitants of the villages and towns which form part of the Bojanala District Municipal area (including Rustenburg and Madibeng Local Municipalities) in the North West Province;
- 2.1.21. **Community Trust Shares** means 31 (thirty one) ordinary shares which comprise 31% (thirty one percent) of the total issued shares of the Company;
- 2.1.22. **Companies Act** means the Companies Act, 2008, read with the regulations promulgated thereunder;
- 2.1.23. **Company** means Newshelf 1335 Proprietary Limited, a limited liability company incorporated in South Africa, with registration number 2015/310743/07;
- 2.1.24. **Conduit Activities** means the provision by the Trust of funds or assets to any PBO or an institution, board or body contemplated in section 10(1)(cA)(i) of the Income Tax Act which carries on any Public Benefit Activity for the benefit of any Beneficiaries;
- 2.1.25. **Conflict Resolution Panel** means the conflict resolution panel, in its capacity as the committee appointed for the purpose of, and in accordance with the procedures set out in clause 31 below (it being recorded that the Conflict Resolution Panel is not a Committee appointed in terms of clause 16 below);
- 2.1.26. **Connected Persons** has the meaning ascribed to this term in section 1 of the Income Tax Act in relation to a Trust and, where applicable, as interpreted by SARS from time to time;

- 2.1.27. **Contribution/s** means any cash or property which is unconditionally and irrevocably donated or made over to the Trust by a Contributor in pure liberality and with disinterested benevolence and for which there are no reciprocal obligations, and which does not confer a direct or indirect benefit on any Contributor, to be evidenced by the Contributor confirming that the disposal is intended as a Contribution as contemplated in this Trust Deed. Where relevant and/or appropriate, references to Contributions shall include dividends on the Community Trust Shares;
- 2.1.28. **Contributor** means any Person who provides a Contribution to the Trust;
- 2.1.29. **Costs** means:
- 2.1.29.1. Administrative Costs; and/or
- 2.1.29.2. Project Costs,
- as the case may be;
- 2.1.30. **CRP Agreement** means the agreement referred to in clause 31 below, to be entered into between the Founder, the Trustees and the Members on or after the date of this Trust Deed, substantially in the form of the draft attached hereto as Annexure 2;
- 2.1.31. **CRP Dispute** means the type of dispute described in clause 31 below;
- 2.1.32. **Day** means a calendar day;
- 2.1.33. **Discretion** means, where used in the context of the Trustees, their sole, absolute and unfettered discretion;
- 2.1.34. **Donation** means the donation of R100.00 (one hundred rand) made by the Founder to the First Trustees in terms of clause 4 below;
- 2.1.35. **ECTA** means the Electronic Communications and Transactions Act, 2002;
- 2.1.36. **Encumbrance** means:
- 2.1.36.1. any mortgage, pledge, lien or cession conferring security, hypothecation, security interests, preferential right or trust arrangement or other arrangement securing any obligation of any Person;

- 2.1.36.2. any arrangement under which money or claims to, or for the benefit of, a Bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any Person; or
- 2.1.36.3. any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of security;
- 2.1.37. **Financial Adviser** shall have the meaning ascribed to that term in clause 17.2.2 below;
- 2.1.38. **Financial Year** means the financial year of the Trust, as set out in clause 26 below;
- 2.1.39. **First Trustees** means Philip Andrew Hermann Jacobs and Hethendra Gangaram Hira, being the first Trustees of the Trust;
- 2.1.40. **Founder** means Sibanye Platinum Proprietary Limited, a limited liability company incorporated in South Africa with registration number 2014/243820/07, and, where the Founder is required to act in terms of this Trust Deed, shall mean the Founder as represented by any duly authorised representative of the Founder;
- 2.1.41. **Income Tax Act** means the Income Tax Act, 1962;
- 2.1.42. **Income Tax Exemption** has the meaning ascribed to that term under the Income Tax Act;
- 2.1.43. **Independent Trustees** means a Trustee who:
- 2.1.43.1. has no employment with the Trust; and
- 2.1.43.2. does not have a direct or indirect beneficial interest in the Trust;
- 2.1.44. **Letters of Authority** means the Letters of Authority issued by the Master of the High Court to a Trustee, authorising such Trustee to act for and on behalf of a trust;
- 2.1.45. **Master** means the Master of the High Court of South Africa;
- 2.1.46. **Month** means a calendar month;



- 2.1.47. **MPRDA** means the Mineral and Petroleum Resources Development Act, 2002;
- 2.1.48. **Objectives** means the purpose and objects of the Trust as set out more fully in clause 5.1 below;
- 2.1.49. **Operating Model** means the Policy entitled “Sibanye Rustenburg Mine Community Development Trust Operating Model” setting out the operating model to be implemented by the Trustees and the Administrator in connection with the Trust Activities a draft of which is attached hereto as Annexure 3;
- 2.1.50. **Original Trust Deed** means the initial trust deed of the Trust dated 15 January 2016;
- 2.1.51. **Parties** means the Founder and the Trustees, and "Party" means any one of them as the context may indicate;
- 2.1.52. **PBO** means an organisation which is approved as a public benefit organisation in terms of section 30 of the Income Tax Act;
- 2.1.53. **Policies** means the policies, regulations, directives, guidelines, procedures and other documents of the Founder and/or any company within the Founder's group of entities from time to time which may be applicable to the Trust by virtue of the Founder having established the Trust, including the Operating Model, and which may be amended by the Founder from time to time. Any such amendments shall be made available in writing to the Trust and the Trustees by the Founder;
- 2.1.54. **Project Costs** means all lawful, reasonable and necessary costs, charges, expenses and tax (if any) incurred by the Trustees and/or the Administrator on behalf of the Trust in connection with the implementation of the Trust Activities, but excluding Administrative Costs;
- 2.1.55. **Public Benefit Activity** means “Public Benefit Activity” as defined in section 30 of the Income Tax Act;
- 2.1.56. **Rand** or **R** means the lawful currency of South Africa;
- 2.1.57. **Registration Date** means 27 January 2016, being the date on which this Trust Deed was registered by the Master;

- 2.1.58. **Related** shall have the meaning ascribed to that term in section 2 of the Companies Act. As at the date of this Trust Deed, the term is defined as set out in Annexure 1;
- 2.1.59. **Rules of AFSA** means the collective body of the AFSA rules and regulations, as may be amended from time to time;
- 2.1.60. **Rustenburg Operations** means the Bathopele, Siphumelele (including Khomanani), and Thembelani (including Khuseleka) mining operations, two concentrating plants, an on-site chrome recovery plant, the Western Limb Tailings Retreatment Plant, associated surface infrastructure and related assets and liabilities;
- 2.1.61. **S18A Certificate** means a receipt issued by the Trustees to a Contributor in respect of a Contribution where such Contributor and Contribution are covered by section 18A of the Income Tax Act;
- 2.1.62. **SARS** means the South African Revenue Service;
- 2.1.63. **Shareholders Agreement** means the written shareholders agreement entered into amongst the shareholders of the Company and the Company, as amended from time to time, as contemplated at Step 11 of the Steps Document;
- 2.1.64. **Sibanye Group** means the group of companies owned and/or controlled by the Founder;
- 2.1.65. **Signature Date** means the date this Trust Deed is signed by all the Parties hereto;
- 2.1.66. **South Africa** means the Republic of South Africa;
- 2.1.67. **Statutes** includes the Act (as defined above), and any other statute affecting the performance by the Trustees of their duties or functions as such;
- 2.1.68. **Step** means a step in the BEE restructuring of SRPM, described and set out in the Steps Document;
- 2.1.69. **Steps Document** means the BEE Restructuring Steps document setting out the steps to be followed to restructure SRPM, the latest version of which was attached to the Original Trust Deed;

- 2.1.70. **Trust** means the Sibanye Rustenburg Mine Community Development Trust (previously known as the Rustenburg Mine Community Development Trust), IT000198/2016(T), constituted in terms of the Original Trust Deed, as amended and restated in terms of this Trust Deed;
- 2.1.71. **Trust Activities** means any Public Benefit Activity carried out by the Trust (including any Conduit Activity) for purpose of achieving the Objectives;
- 2.1.72. **Trust Assets** means, at any time, all the assets of the Trust, including the Donation;
- 2.1.73. **Trust Capital** means, collectively:
- 2.1.73.1. the Trust Assets; and
- 2.1.73.2. the Trust Income,
- after deducting the aggregate of the liabilities of the Trust (both actual and contingent) and the sum of all provisions for liabilities (actual or contingent), the amount of which cannot be determined with substantial accuracy;
- 2.1.74. **Trust Deed** means this amended and restated trust deed including any annexures thereto, as amended from time to time;
- 2.1.75. **Trust Income** means Contributions and any other donations and income that may accrue to the Trust from time to time (whether from the Community Trust Shares or otherwise), as well as any income earned therefrom;
- 2.1.76. **Trustees** means the Trustees holding office as such in terms of this Trust Deed;
- 2.1.77. **Unanimous Resolution** means a resolution:
- 2.1.77.1. passed by more than 50% (fifty percent) plus 1 (one) of the Trustees who are present at, or are otherwise participating in a meeting of Trustees, provided that a quorum is present at such meeting in accordance with the provisions of this Trust Deed; or

2.1.77.2. in Writing signed by all the Trustees but which is not passed at a meeting of the Trustees, which shall be valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted, and such resolution may be signed in counterparts and shall have effect from the date of the last signature in time;

2.1.78. **Will** means the last will and testament, any testamentary instruments and related codicils of a testator/testatrix;

2.1.79. **Writing** means any writing, however produced or communicated, including a telefax, e-mail and appearing in any one or more forms of any kind, including print, typescript and manuscript, and "Written" shall have a corresponding meaning; and

2.1.80. **Year** means a period of 12 (twelve) consecutive Months.

## 2.2. **Interpretation**

In this Trust Deed, except to the extent that the context requires otherwise:

2.2.1. references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other Persons;

2.2.2. a reference to a **Person** includes any Person, firm, company, corporation, government, state or agency of a state, or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and also includes any successor in title of the relevant Person;

2.2.3. the headings of the clauses in this Trust Deed are for the purpose of convenience and reference only and shall not be used in the interpretation of nor to modify or amplify the terms of this Trust Deed nor any clause hereof;

2.2.4. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Trust Deed;

- 2.2.5. any reference to an enactment or subordinate legislation is to that enactment or subordinate legislation as at the Signature Date and as amended or re-enacted from time to time. Any reference to a particular section in an enactment is to that section as at the Signature Date and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of the section contained in this Trust Deed are changed, the provisions of this Trust Deed shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 2.2.6. if any term is defined within the context of any particular clause in this Trust Deed, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Trust Deed, notwithstanding that that term is not defined in this clause 2;
- 2.2.7. when any number of Days is prescribed in this Trust Deed, same shall be reckoned exclusively of the first and inclusively of the last Day, unless the last Day falls on a day that is not a Business Day, in which case the last Day shall be the next succeeding Business Day;
- 2.2.8. when any number of Months or Years is prescribed in this Trust Deed, same shall be calculated from a specific Day of a Month in a specific Year, to the numerically corresponding Day and Month in the following Month(s) or Year(s), as the case may be, less 1 (one) Day, unless the last Day falls on a Day that is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 2.2.9. any reference to business hours shall be construed as being the hours between 08h00 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
- 2.2.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of such contract, shall not apply;
- 2.2.11. the words **other** and **otherwise** shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible; and
- 2.2.12. notwithstanding the provisions of ECTA, **signed** shall mean a signature executed by hand on paper containing the document or an advanced

electronic signature as defined in ECTA, applied to the document by the signatory.

## **PART II – ESTABLISHMENT OF TRUST, FUNDING REQUIREMENTS AND ACTIVITIES OF THE TRUST**

### **3. ESTABLISHMENT OF THE TRUST**

The Trust:

- 3.1. was established in accordance with the Original Trust Deed and Letters of Authority were issued to the First Trustees on 27 January 2016;
- 3.2. is a non-profit organisation and PBO, with an altruistic and philanthropic intent; and
- 3.3. shall be administered by the Trustees, assisted by the Administrator (to the extent that one is appointed), for the benefit of the Beneficiaries, in the manner, and upon the terms and conditions set out in this Trust Deed.

### **4. DONATION AND ACQUISITION OF COMMUNITY TRUST SHARES**

The Founder:

- 4.1. irrevocably donated to the First Trustees the sum of R100.00 (one hundred rand) which Donation vests in the Trustees in their capacity as such and which is administered in accordance with this Trust Deed; and
- 4.2. disposed of the Community Trust Shares to the Trust.

### **5. PURPOSE AND OBJECTIVES OF THE TRUST**

- 5.1. The purpose and objects of the Trust shall be to acquire the Community Trust Shares, to hold the Community Trust Shares as a Trust Asset for the benefit of the Beneficiaries and to enhance the material benefits and moral welfare of the Beneficiaries in any way that the Trustees may from time to time decide including the creation, through the Trust, of a platform for external investment, and thereby advancing, in particular:
  - 5.1.1. education, training and bursaries and more specifically so in the mining and related industries;
  - 5.1.2. sustainable health and social development within the Community and amongst the Beneficiaries;

- 5.1.3. the rehabilitation of the natural environment of the Community through establishing synergy with the Rustenburg Operations' rehabilitation programme;
- 5.1.4. entrepreneurship within the Community;
- 5.1.5. sustainable economic development within the Community; and
- 5.1.6. the upliftment and empowerment in general of the Beneficiaries, in particular the empowerment of women, youth and people with disabilities within the Community,

(collectively, the **Objectives**).

## 6. **DISTRIBUTION TO BENEFICIARIES**

6.1. Subject to the provisions of this Trust Deed, the Trustees shall be empowered and obliged to apply the net Trust Income from time to time:

- 6.1.1. for the benefit of the Beneficiaries, by furthering the Objectives; and
- 6.1.2. if there is any Trust Income available after they have given effect to clause 6.1.1, and paid all Costs as well as taxes, for making distributions thereof in such proportions as they, in consultation with the Founder, may from time to time determine in accordance with the provisions of Part IV – Beneficiaries of this Trust Deed, to any charitable, educational or religious institutions, funds, bodies and causes, provided always that at least 85% (eighty five percent) of the benefits derived from or accruing to any Person from such charitable, educational or religious institution, fund, body and/or centre are enjoyed by Black Persons within the Community,

and they shall reinvest and accumulate to the Trust Capital any of the Trust Income not so applied or distributed in accordance with the provisions of this Trust Deed.

## 7. **CONTRIBUTIONS**

7.1. The Trustees shall not be entitled to accept or receive any Contribution which is revocable at the instance of the Contributor thereof for reasons other than:

- 7.1.1. a material failure to conform to the designated purposes and conditions of such Contribution; or

7.1.2. a misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act.

7.2. The Trustees shall not be entitled to accept or receive any Contribution in terms of which the Contributor has imposed conditions which could enable such Contributor, or any Connected Person in relation to such Contributor, to derive some direct or indirect benefit from the application of such Contribution, unless the Contributor is a PBO or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act and which has as its sole or principal object the carrying on of any Public Benefit Activity.

## 8. RECEIPTS TO BE ISSUED BY THE TRUST

8.1. The Trustees shall have a Discretion, in respect of all Contributions, as to whether they will furnish to the Contributor a S18A Certificate; provided that the Trustees shall be obliged to furnish the Founder and/or any other members of the Sibanye Group (as may be relevant) with a S18A Certificate on request.

8.2. In the event that the Trustees issue a S18A Certificate in respect of any Contributions received by the Trust, the following particulars shall be included in such S18A Certificate in accordance with the provisions of section 18A(2)(a) of the Income Tax Act:

8.2.1. the reference number of the Trust issued by the Commissioner for the purposes of section 18A of the Income Tax Act;

8.2.2. the date of receipt of the Contribution;

8.2.3. the name of the Trust, together with an address to which enquiries may be directed in connection therewith;

8.2.4. the name and address of the Contributor;

8.2.5. the amount of the Contribution or the nature of the Contribution; and

8.2.6. a certificate to the effect that the S18A Certificate is issued for purposes of section 18A of the Income Tax Act, and that the Contribution has been or will be used exclusively for the Objectives.



## 9. TAXES AND DEDUCTIONS

- 9.1. If so determined by the Trustees at any time as being required, the Trustees shall be entitled to deduct and withhold from any amount payable by the Trustees to any Beneficiary, the amount calculated by the Trustees in good faith as being payable in respect of any liability of the Beneficiary concerned for any taxes payable and the Trustees shall, if they so deduct and withhold same, pay same to the relevant authorities.
- 9.2. In addition, if so determined by the Trustees, in consultation with the Founder, at any time as being required, the Trustees may deduct from any amount payable to any Beneficiary, any other amount of any nature and from whatsoever cause arising which is then owing by the Beneficiary to the Company and pay same directly to the Company for and on behalf of the Beneficiary.

## PART III – TRUSTEES

### 10. APPOINTMENT OF TRUSTEES

#### 10.1. First Trustees

It is recorded that Philip Andrew Hermann Jacobs and Hethendra Gangaram Hira were appointed as the First Trustees of the Trust.

#### 10.2. New Trustees

It is recorded that Grant Michael Stuart, Kgomotso Mmathuto Molebatsi, Thabisile Charity Phumo and Themba George Nkosi were appointed as Trustees of the Trust on 31 July 2019 and Letters of Authority were issued to them. They have accepted their appointment as such and undertaken to commence carrying out all the duties, functions and obligations incumbent upon them of the Trust Deed.

#### 10.3. Number and Appointment of Trustees

- 10.3.1. With effect from 31 July 2019, there shall at all times be at least 3 (three) but not more than 7 (seven) Trustees in office.
- 10.3.2. The Founder shall at all times be entitled to appoint, remove and replace any Trustees on Written notice to all of the Trustees, provided that the Founder shall use reasonable endeavours to ensure that at all times after 31 July 2019:

- 10.3.2.1. at least 50% (fifty percent) of the total number of Trustees must be Independent Trustees; and
  - 10.3.2.2. at least 50% (fifty percent) of the Trustees shall be Black Persons; and
  - 10.3.2.3. at least 25% (twenty five percent) of the Trustees shall be Black women; and
  - 10.3.2.4. at least 3 (three) Trustees shall not be Connected Persons in relation to each other; and
  - 10.3.2.5. at least 2 (two) Trustees shall be members of the Community; and
  - 10.3.2.6. no single Person will directly or indirectly control the decision-making powers of the Trust.
- 10.3.3. If at any time the number of Trustees falls below 3 (three) for any reason whatsoever and a new Trustee or Trustees has/have not been appointed by the Founder in accordance with clause 10.3.2 above, the remaining Trustee or Trustees shall be entitled to continue to act in all matters affecting the Trust.
- 10.3.4. Any Trustee appointed by the Founder or otherwise in accordance with clause 10.3.3 above shall only commence carrying out all the duties, functions and obligations incumbent upon them in terms of this Trust Deed once Letters of Authority have been issued to them by the Master.
- 10.3.5. No Trustee shall have the right during his lifetime or by last Will to appoint his successor or an alternative Trustee to him or a Person to serve as Trustee in his place and stead.
- 10.3.6. In the event that the BBBEE Legislation require the appointment of any additional Trustees, the current Trustees shall ensure that the additional Trustees are appointed in accordance with the relevant provisions of the BBBEE Legislation.
- 10.3.7. The Trustees shall, in the performance of their duties and the exercise of their powers under this Trust Deed act with the care, diligence and skill which can reasonably be expected of a Person who manages the affairs of another, subject to and in accordance with the Act.

#### 10.4. Loss of office by Trustees

- 10.4.1. The following persons shall be disqualified from acting as a Trustee (and any Trustee in office that does not qualify to act as a Trustee shall immediately cease to act as a Trustee):
- 10.4.1.1. any Person who would be disqualified from acting as a director of a company in terms of the Companies Act;
  - 10.4.1.2. any Person who is found to be unfit or incapable of acting as a Trustee in accordance with section 20 of the Act;
  - 10.4.1.3. any Person removed from an office of trust on account of misconduct;
  - 10.4.1.4. any Person whose estate has been sequestrated provisionally or finally and has not yet been rehabilitated;
  - 10.4.1.5. any Person who has been declared by a competent court to be mentally ill or incapable of managing his own affairs or if he is by virtue of the Mental Health Care Act, 2002, detained as a patient in an institution or as a State patient or whom all of the other Trustees consider, in their Discretion, to be incapable of managing his affairs;
  - 10.4.1.6. any Person who has been convicted in South Africa or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine;
  - 10.4.1.7. any Person who is in material breach of this Trust Deed and/or the Policies (as determined by the Founder, acting reasonably);
  - 10.4.1.8. any Person whose appointment would in any way adversely impact the points which the Founder and/or any of the companies in which the Trust holds shares may otherwise have been entitled to earn under the generic scorecard of the BBBEE Legislation; and

- 10.4.1.9. any Person who fails to attend 3 (three) consecutive meetings without giving a valid reason (in the reasonable discretion of the Founder) for such failure.
- 10.4.2. A Trustee shall cease to hold office if:
- 10.4.2.1. he becomes disqualified in terms of clause 10.4.1 above;
  - 10.4.2.2. an application is filed for the sequestration or liquidation of his estate upon which a provisional order of sequestration or liquidation is subsequently granted, or an application is filed for the surrender of his estate or for an administration order or if he commits an act of insolvency as defined in the insolvency law for the time being in force or if he makes any arrangement or composition with his creditors generally;
  - 10.4.2.3. he resigns his office by not less than 30 (thirty) Days' (or such shorter period as the remaining Trustees or Trustee may agree to Written notice to the remaining Trustee/s and the Master;
  - 10.4.2.4. he fails to make the necessary disclosures of a personal interest in a contract to which the Trust is a party;
  - 10.4.2.5. the majority (i.e. 50% (fifty percent) plus 1% (one percent)) of the Trustees in writing require him to resign;
  - 10.4.2.6. he has been appointed for a limited period and that period has expired;
  - 10.4.2.7. he is a nominee and is removed by written notice to the Trustees under the hand of the Person or persons of which he is a nominee;
  - 10.4.2.8. the case of an Independent Trustee, such Independent Trustee ceases to be independent as required;
  - 10.4.2.9. he is removed from office by the Master or a court in terms of section 20 of the Act;

10.4.2.10. if at the time of his appointment he was an employee of the Sibanye Group, he ceases to be an employee of the Sibanye Group;

10.4.2.11. he no longer meets the criteria which formed the basis of his appointment as Trustee; or

10.4.2.12. he dies.

10.4.3. Notwithstanding anything to the contrary contained in this Trust Deed, unless otherwise agreed in writing between the Founder and the Trustees, a Trustee shall hold office for a maximum period of 4 (four) years after the date on which Letters of Authority was issued to him.

**10.5. No claims**

A Trustee shall have no claim against the Trust arising out of or in connection with his removal or loss of office.

**11. MEETINGS AND PROCEEDINGS OF TRUSTEES**

11.1. The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, provided that they shall meet together at least twice in each Financial Year.

11.2. In respect of all meetings of the Trustees:

11.2.1. any Trustee is at all times entitled to convene a meeting of the Trustees by giving 14 (fourteen) Days Written notice to all Trustees, or on such shorter notice as may be agreed by all the Trustees in Writing; provided that all meetings called by the Trustees acting collectively may be called on not less than 7 (seven) Days' notice in Writing;

11.2.2. the Trustees may participate in a meeting of the Trustees by means of conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other and any such participation in a meeting shall constitute presence in person at the meeting;

11.2.3. the Trustees may, from time to time, elect a chairperson to hold office for such period/s as they may determine;

- 11.2.4. the chairperson of the Trustees for the time being shall chair all meetings of Trustees, provided that if that chairperson is not present at a meeting of Trustees, the Trustees present at that meeting shall elect a chairperson for that meeting;
- 11.2.5. 3 (three) Trustees, (1) one of which shall be a representative of the Founder, shall constitute a quorum at meetings of the Trustees. If within 30 (thirty) minutes after the time appointed for such meeting a quorum is not present, the meeting shall stand adjourned to a date not earlier than 7 (seven) Days and not later than 14 (fourteen) Days after the date of the meeting, and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes after the time appointed for the adjourned meeting, the Trustees present shall constitute a quorum for that adjourned meeting;
- 11.2.6. subject to the provisions of clause 11.2.8 below, decisions to be taken by the Trustees present at a meeting of Trustees shall take place by majority vote, with the decision of the majority deemed to be the decision of all of the Trustees;
- 11.2.7. the chairperson at a meeting of Trustees shall not have a deciding or casting vote;
- 11.2.8. no decision of the Trustees in relation to any of the matters set out in this clause 11.2.8 shall be of any force and effect unless a Unanimous Resolution has been passed in favour of such matters, in addition to any other requirements applicable in terms of this Trust Deed and/or the Shareholders Agreement:
- 11.2.8.1. any acquisition by the Trust of any assets of or interest in any Person;
- 11.2.8.2. the conclusion and/or amendment of any agreement, arrangement and/or understanding of whatsoever nature between the Trust and any other Person (other than the agreements which the Trust is permitted to enter into in terms of this Trust Deed); or

- 11.2.8.3. the appointment by the Trust of any financial and/or legal advisers, including the Financial Adviser, if any legal advisers or a Financial Adviser is appointed;
- 11.2.9. no decision of the Trustees in relation to any of the matters set out in this clause 11.2.9 shall be of any force and effect unless a Unanimous Resolution has been passed, and the prior written consent of the Founder has been obtained, in favour of such matters, in addition to any other requirements applicable in terms of this Trust Deed and/or the Shareholders Agreement:
  - 11.2.9.1. any variation, alteration, supplementation or amendment to this Trust Deed;
  - 11.2.9.2. the termination of the CRP Agreement;
  - 11.2.9.3. the disposal by the Trust of any of its material Trust Assets, with the Trustees and the Founder having to agree from time to time on what constitutes a "material" Trust Asset and, in the absence of such agreement, the disposal by the Trust of any Trust Asset shall be deemed to be "material";
  - 11.2.9.4. the Encumbrance by the Trust of any of its Trust Assets;
  - 11.2.9.5. the borrowing of any money and/or the incurrence of any liabilities (whether actual or contingent) by the Trust, the making of any loan or granting of any credit, or the furnishing of any financial guarantee, suretyship, bond or indemnity of whatsoever nature or the assumption of any liability of whatsoever nature;
  - 11.2.9.6. the passing of any resolution relating to and/or in connection with the subjection of the Trust to any voluntary proceedings whatsoever under any law, regulation and/or other procedure relating to and/or concerning insolvency, winding-up, judicial management, reconstruction and/or readjustment of debt or relief from creditors;
  - 11.2.9.7. the entering by the Trust into any agreement which is outside the normal course of the business of the Trust, or which is in the normal course of the business of the Trust but will have a

material financial impact on the Trust. The Trustees and the Founder may agree from time to time on what constitutes a "material financial impact" as aforesaid and, in the absence of such agreement, all agreements entered into by the Trust shall be deemed to have a "material financial impact" on the Trust;

11.2.9.8. the conclusion and/or amendment of any agreement, arrangement and/or understanding of whatsoever nature between the Trust and any other Person (other than the agreements which the Trust is permitted to enter into in terms of this Trust Deed);

11.2.9.9. the making by the Trust of any investments of any nature whatsoever other than fixed deposits and money market accounts; and

11.2.9.10. the appointment and/or replacement by the Trust of the Administrator;

11.2.10. a resolution in Writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted, and such resolution may be signed in counterparts;

11.2.11. the Trustees shall keep minutes of their meetings in Writing, which shall be inserted into a minute book, and all resolutions passed by the Trustees shall be duly signed by all the Trustees present at the meetings; and

11.2.12. the minute book shall be open for inspection by the Founder at all times.

11.3. The Founder shall be entitled, on request, to receive the notices for all the meetings of the Trustees as well as any resolutions passed by the Trustees when such notices or resolutions are circulated to the Trustees.

11.4. The Trustees are entitled to authorise 1 (one) or more of them to sign on behalf of the Trustees all documents for official purposes which are necessary for the administration of the Trust and for the execution of any transaction concerned with the affairs of the Trust, and any resolution which is certified by a Trustee as a true extract from the minutes of a particular meeting or resolution of all the Trustees, has in every respect the legal validity of a resolution signed by all the Trustees.



## 12. POWERS OF THE TRUSTEES

12.1. The Trustees shall, in addition to all powers required or allowed under the common law or by Statute, have the power for the benefit and purposes of the Trust to do whatever may be effected by a natural Person who is *sui juris* in relation to his own affairs and, without derogating from the generality of the foregoing, and save as otherwise expressly provided for in this Trust Deed, the Trustees shall have the following specific powers and duties:

12.1.1. to acquire the Community Trust Shares;

12.1.2. from time to time to exercise any voting rights attached to the Community Trust Shares;

12.1.3. to receive, distributions and/or any other assets from the Company in their capacity as Trustees of the Trust, being the holder of the Community Trust Shares;

12.1.4. to enter into contracts on behalf of the Trust, including, but not limited to, the Shareholders Agreement and any other contracts in respect of the Community Trust Shares and any other securities forming part of the Trust Capital, which, without derogating from other provisions which may be incorporated therein, may relate to or restrict the disposal of those shares, grant rights of pre-emption to other shareholders of the said companies and regulate the exercise of votes;

12.1.5. to open and operate Bank accounts in the name of the Trust with any Bank, without any overdraft facility available in respect thereof, to draw, accept, make or endorse cheques, bills of exchange or promissory notes for and on behalf of the Trust;

12.1.6. to pay to any Beneficiary any amount due to the Beneficiary in cash or in kind or partly in cash and partly in kind, with the power in their Discretion to determine the selection and valuation of any Trust Assets to be distributed and the manner of distribution thereof among Beneficiaries provided that:

12.1.6.1. the Trustees may employ a valuer for the purpose of determining the value of any such Trust Assets;

- 12.1.6.2. the decision of the Trustees as to the value of any Trust Assets for the purpose of this paragraph shall be final and binding on all interested persons; and
- 12.1.6.3. no Beneficiary may dispute the value of any such Trust Assets;
- 12.1.7. subject to the remaining provisions of this Trust Deed, to reimburse themselves from the Trust Capital for all Administrative Costs, and, without detracting from the foregoing, to employ professional advisers, consultants, agents and other people whomsoever to carry out the Objectives and to pay their fees, commissions, remuneration and other charges as part of the Administrative Costs out of the Trust Capital and to confer upon any agents so appointed the right to exercise any Discretion which may be vested in the Trustees;
- 12.1.8. have *locus standi in judicio* and be capable of bringing, defending, opposing, withdrawing, settling and/or otherwise acting on behalf of the Trust in connection with any proceedings whatsoever in or before any court, or in any arbitration, or before any other forum, provided that all costs reasonably incurred by them in that regard shall be for the account of the Trust;
- 12.1.9. to call in, recover, collect and sue for all moneys owing to the Trust, to foreclose bonds, to buy in securities, to institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary for those purposes;
- 12.1.10. to compromise, compound, submit to arbitration or settle upon such terms and conditions as they may deem advisable all claims made by or against the Trust or them in their capacity as Trustees or matters arising in relation to the Trust and all compromises and settlements effected by them shall be final and binding on all Beneficiaries under this Trust Deed;
- 12.1.11. generally to do all things required to give effect to the terms of this Trust Deed;
- 12.1.12. to appoint the Conflict Resolution Committee; and
- 12.1.13. to exercise such further rights, powers and authorities as may from time to time be conferred upon them in terms of this Trust Deed,

provided that nothing in this Trust Deed shall be construed as conferring any authority on the Trustees to act for, or purport to act for, or on behalf of, or in the name of the Founder.

12.2. Without prejudice to any of the foregoing, the Trustees shall:

12.2.1. comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by applicable laws to enable them lawfully to enter into and to perform their obligations in terms of this Trust Deed, and to ensure the legality and enforceability of this Trust Deed;

12.2.2. act at all times and do all such things as may be necessary and/or required in order for this Trust to be fully recognised as a PBO (if and when applicable); and

12.2.3. until the termination of this Trust, act at all times and do all such things as may be necessary in order for this Trust to fully comply with the applicable provisions of the BBBEE Legislation.

12.3. The Trustees shall not be empowered to:

12.3.1. be a party to, or knowingly permit (or has knowingly permitted) themselves or the Trust, to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have become payable by a Person under the Income Tax Act or any other act administered by the Commissioner; or

12.3.2. pay any remuneration which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any Person in a manner which is not consistent with the Objectives.

## 13. **DUTIES OF THE TRUSTEES**

### 13.1. **General duties**

13.1.1. Without in any way derogating from the generality of the fiduciary duties of the Trustees, they shall in particular be obliged to:

- 13.1.1.1. implement, and act in accordance with, the Operating Model and any other Policies;
  - 13.1.1.2. accept any Contributions which may be made by testamentary bequests or by Contributions *inter vivos* or by any other means, subject to the conditions set out in this Trust Deed relating to Contributions;
  - 13.1.1.3. from time to time open and/or hold a banking or similar account with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 in the name of the Trust and to deposit in such account all moneys which are due to the Trust in the first instance;
  - 13.1.1.4. administer the Trust Capital and the application thereof and income accruing thereto in order to achieve the Objectives for the ultimate benefit of the Beneficiaries;
  - 13.1.1.5. utilise the Trust Capital solely for the Objectives or to invest the Trust Capital in accordance with the provisions of section 30 of the Income Tax Act;
  - 13.1.1.6. distribute or incur the obligation to distribute at least 50% (fifty percent) of all Trust Income received for which S18A Certificates were issued within 12 (twelve) months after the end of the year of assessment in which the relevant Trust Income was received;
  - 13.1.1.7. keep proper and comprehensive books of account and records;
  - 13.1.1.8. retain any books of account, records or other documents in respect of the Trust or the Trust Capital for a period of 5 (five) Years; and
  - 13.1.1.9. comply with the reporting requirements as prescribed by the Commissioner.
- 13.1.2. The Trustees shall not have the power to use Trust Capital for the carrying on of any business or trading activity in the name of the Trust in a manner contemplated in 10(1)(cN)(ii) of the Income Tax Act.

13.1.3. The assets of the Trust Capital shall not be invested in any private company in which a Trustee, or any Person Related to a Trustee, is the beneficial owner of any shares, unless the conflict of interest is adequately disclosed in Writing by the Trustee concerned to the remaining Trustees prior to the investment being made and the investment is then approved by each of the disinterested Trustees.

**13.2. Duties of Trustees to ensure compliance with BBBEE Legislation**

13.2.1. The Trustees shall carry out the Trust Activities in the furtherance of the Objectives and select the Beneficiaries in a manner that gives effect to the BBBEE Legislation.

13.2.2. The Trustees shall be obliged to assess and ensure, on an annual basis, that the Trust complies with the provisions of the BBBEE Legislation.

13.2.3. The Trustees shall keep a register in relation to each Beneficiary and ensure that the register shall be accessible to any Beneficiary or BBBEE verification agency upon reasonable request, and shall be open for inspection at the official office of the Trust during business hours.

**13.3. Duties of Trustees to ensure compliance with the Income Tax Act**

13.3.1. If necessary or desirable, the Trustees shall register the Trust as a PBO in accordance with the requirements of the Income Tax Act.

13.3.2. The Trustees shall at all times ensure that:

13.3.2.1. all the Trust Activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;

13.3.2.2. no resources of the Trust will be used, directly or indirectly, to support, advance or oppose any political party;

13.3.2.3. no Trust Activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the Trust otherwise, than by way of reasonable remuneration paid in accordance with the provisions of this Trust Deed;

13.3.2.4. no portion of the Trust Capital will be distributed to any Person other than in the course of undertaking the Trust Activities;

13.3.2.5. the Trust Capital will be used solely to achieve the Objectives;  
and

13.3.2.6. the Trust Activities are for the benefit of, or widely accessible to, the Community at large, including any sector thereof, other than small and exclusive groups,

so as to achieve compliance with the BBBEE Legislation and, to the extent applicable, to achieve and/or retain the Trust's status as a PBO.

13.3.3. The Trustees shall ensure that, where the Trust conducts Conduit Activities, it has taken reasonable steps to ensure that the funds on-donated are utilised by the Beneficiary for the purpose for which it was provided.

13.3.4. The Trustees shall not undertake or support in any way, whether directly or indirectly, any activity, action and/or expenditure relating to or use its resources directly or indirectly in:

13.3.4.1. the support, advancement or opposition of a political party;

13.3.4.2. the establishment, support and/or association in any way with the religious, spiritual and/or worshipping activities of any religious movement, church, congregation and/or religious institution constituted in whatever form, provided that this exclusion shall not apply in respect of the secular activities of such religious movement, church, congregation and/or religious institution; provided that the Trustees shall be permitted to support any non-religious activities of any such movement, church, congregation and/or institution; and

13.3.4.3. any activity that will directly or indirectly promote the economic self-interest of any Trustee or employee of the Trust or service provider to the Trust or any Person Related to the aforementioned persons, otherwise than by way of reasonable remuneration, nor the enrichment, making of profit by, support and/or payment to any individual or any group of individuals.

#### 14. **DISCRETION, EXEMPTIONS AND PRIVILEGES OF THE TRUSTEES**

- 14.1. The Trustees shall be exempt from any obligation to furnish security in connection with their appointment and/or for the due administration of the Trust to the Master or any other Person, body or authority. The Master and any such other Person are hereby directed to dispense with and to not require such security.
- 14.2. Where this Trust Deed provides for the exercise of a Discretion by the Trustees or the exercise of any power in their Discretion, save to the extent that is otherwise provided in this Trust Deed, the Discretion shall be the sole and absolute Discretion of the Trustees as they think fit provided that the Trustees must at all times exercise their Discretion in a manner which they consider to be advisable for the best interests of all of the Beneficiaries in accordance with the Objectives.
- 14.3. Subject to applicable laws:
- 14.3.1. no Trustee shall be liable to make good to the Trust or any Beneficiary any loss occasioned or sustained by any cause, howsoever arising, except such losses as may arise from or be occasioned by his own personal dishonesty or other wilful misconduct or gross negligence;
- 14.3.2. no Trustee shall be liable for any act of dishonesty or other misconduct committed by any other Trustee unless he knowingly allowed it or was an accessory to such dishonesty or other misconduct;
- 14.3.3. if and to the extent that the Trust is fully insured against such losses, the Trustees shall be indemnified out of the Trust Capital against all claims and demands of whatsoever nature that may be made upon them arising out of the reasonable exercise or purported exercise of any of the powers hereby conferred upon them; and
- 14.3.4. the Trustees may rely, and shall not incur any liability as a consequence of relying, on any document, resolution or the like (or any copy thereof) which they reasonably believe to be authentic.

#### 15. **REMUNERATION AND REIMBURSEMENT OF THE TRUSTEES**

The Trust may pay remuneration to the Trustees for their services as such, provided that:

- 15.1. such remuneration shall only be paid as Administrative Costs out of the Trust Income;
- 15.2. the Founder has approved of the payment of such remuneration in Writing;

- 15.3. the Trust only pays reasonable (and not excessive) remuneration having regard to what is generally considered reasonable in the sector and in relation to the service rendered by such Trustees; and
- 15.4. the payment of such remuneration has not and will not economically benefit any Person in an manner which is inconsistent with the Objectives.

16. **APPOINTMENT OF COMMITTEES AND DELEGATION OF DUTIES**

- 16.1. The Founder and the Trustees may from time to time appoint Committees.
- 16.2. The Trustees may from time to time delegate to any individual Trustee or Trustees, or to a Committee, any specific duty or assignment, unless such duty or assignment concerns the distribution of any benefit by the individual Trustee or Trustees concerned to himself or themselves in his or their capacity as Beneficiary or Beneficiaries (as the case may be), provided that the Trustees shall not abdicate such delegated duties and the Trustees shall at all times act according to their fiduciary duties in respect of the delegated duties.

17. **EMPLOYEES AND ADVISERS**

- 17.1. A Trustee may be employed by the Trust in a full-time or part-time capacity (whether as an employee or as an independent contractor) and any firm of which he is an employee, director, member or partner may be employed or engaged to act in any matter relating to the Trust and the administration thereof, and shall receive such remuneration as described in clause 15 above or be entitled to charge and be paid a fee for any services rendered by him or his firm in a professional capacity, including acts which any Trustee could have done personally, as the case may be, provided that such fee is not remuneration for services rendered in his capacity as Trustee.
- 17.2. The Trustees may from time to time, with the prior Written consent of the Founder and/or if so directed by the Founder:
  - 17.2.1. appoint an Administrator to assist them in administering the activities of the Trust; and
  - 17.2.2. appoint an appropriately qualified and experienced independent professional financial adviser, as a consultant (who shall not be an employee of the Trust) (the "**Financial Adviser**") on terms and conditions to be determined by the Trustees from time to time, to manage and to



advise the Trustees in relation to the investment process in respect of any portion of the Trust Capital to be invested by the Trustees.

## 18. BOOKS OF ACCOUNT AND AUDITORS

### 18.1. Books of Account

18.1.1. The Trustees, together with the Administrator (if one is appointed), shall keep true and correct records and books of account of their administration of the Trust in such manner and form as is necessary in order that the records and books shall at all times accurately reflect the current position of the Trust. There shall be recorded in such records and books of account, *inter alia*, any change of the Trust Assets from time to time and the Trust Income and/or the expenses applicable to the administration of the Trust.

18.1.2. Such records and books of account, together with all other papers and documents connected with or relating to the Trust, shall be kept in the custody of the Trust.

18.1.3. The Auditors shall have the right of access at all times to the records and books of account of the Trust, and shall be entitled to such information and explanations as may be necessary for the performance of their duties as Auditors.

18.1.4. The Founder and the Trustees shall have the right of access at all times to the records and books of account of the Trust.

18.1.5. The Trustees shall ensure that the books of account are prepared in accordance with Generally Accepted Accounting Standards in South Africa, and shall ensure that the annual financial statements are audited in accordance with the Statements of South African Auditing Standards.

### 18.2. Auditors

18.2.1. The Founder shall:

18.2.1.1. appoint the Auditors;

18.2.1.2. have the right to terminate any such appointment of the Auditor: and

18.2.1.3. have the right to replace the Auditors from time to time.

- 18.2.2. The Auditors shall ensure *inter alia* that:
- 18.2.2.1. the records and books of account of the Trust at all times fairly reflect the financial position of the Trust;
  - 18.2.2.2. there shall be recorded in such records and books of account, *inter alia*, the income and/or the expenses applicable to the administration of the Trust; and
  - 18.2.2.3. an annual income and expenditure statement and balance sheet is prepared reflecting the affairs of the Trust for each Financial Year, or part thereof.
- 18.2.3. The costs of the appointment and on-going retention and remuneration of the Auditor shall be borne by the Trust.

## **PART IV – BENEFICIARIES**

### **19. CRITERIA FOR QUALIFYING BENEFICIARIES**

- 19.1. The Trustees shall procure that the Administrator shall from time to time, but not less than once every Financial Year, conduct an analysis of the needs and requirements of the Community and determine the criteria of any Person/s that are eligible to become a Beneficiary of the Trust. This analysis shall be done in accordance with the process outlined in the Operating Model.
- 19.2. For the avoidance of any doubt, the criteria laid down by the Administrator must at all times be in accordance with the Objectives and be, either directly or indirectly, to the benefit of Black Persons.

### **20. BENEFICIARIES APPOINTED BY IDENTIFICATION**

- 20.1. The Trustees shall procure that the Administrator shall from time to time, but not less than once every Financial Year, having regard to the criteria determined in terms of clause 19 above, identify and recommend to the Trustees who is to be appointed as a Beneficiary of the Trust and the benefits which should accrue to such appointed Beneficiaries. This recommendation shall be done in accordance with the process outlined in the Operating Model.

- 20.2. The Trustees shall, at their Discretion and based on the recommendations of the Administrator:
- 20.2.1. select the Beneficiaries;
  - 20.2.2. determine the amount from the Trust Capital that shall be made available to such Beneficiaries (the "**Allocated Portion**"); and
  - 20.2.3. determine the manner in which such Allocated Portion shall be made available to such Beneficiaries.
- 20.3. It is specifically recorded that the Founder shall not interfere with the Discretion of the Trustees in the selection and retention of Beneficiaries, other than to the extent that such Beneficiaries are in conflict with the anti-corruption Policies or negatively affect the BBBEE ratings of the Founder generally and the Charter obligations on the holders of mining rights to which the Founder has a controlling interest specifically.

## 21. **BENEFICIARIES APPOINTED BY APPLICATION**

- 21.1. Any Person who is eligible to become a Beneficiary of the Trust shall be entitled to apply for benefits from the Trust in accordance with the terms of this clause 21.
- 21.2. The Trustees shall procure that the Administrator shall from time to time, but not less than once every Financial Year, determine whether and when persons ("**Applicants**") shall be entitled to apply for benefits from the Trust, and if such determination is made, the Administrator shall, with the approval in writing of the Trustees, decide on the policies, rules and regulations governing the application process.
- 21.3. An Applicant shall be required to make a Written application to the Trustees in line with a specified application form provided by the Administrator.
- 21.4. An Applicant shall attach any relevant documentation related to the Written application in terms of clause 21.3 above to that Written application.
- 21.5. The Trustees shall be entitled to request that the Applicant provide any further information relating to that Written application.
- 21.6. The Administrator and the Trustees, or any Committee appointed for this purpose, as the case may be, shall meet at the appropriate times in order to consider the applications received, and to decide whether to approve or reject such application. If the application is approved, the Trustees, or the Committee appointed by them, as the

case may be, shall decide on the amount and the manner in which the Allocated Portion shall be made available to the successful Applicant.

- 21.7. Applicants may be requested to attend a meeting in order to make oral representations or to answer questions posed to them in relation to their application.

## 22. **BENEFICIARIES FOR CONDUIT ACTIVITIES**

In relation to the Beneficiaries under the Conduit Activities, such Beneficiaries shall:

- 22.1. be registered as required in terms of the Companies Act (in the case of a company), or the relevant Master's office (in the case of a trust) or be registered in accordance with the requirements of any other applicable law;
- 22.2. be a PBO, an institution, board or body contemplated in section 10(1)(cA)(i) of the Income Tax Act which carries on any Public Benefit Activity;
- 22.3. pass all internal reviews and scrutiny in terms of the Policies, including but not limited to any internal anti-corruption requirements as may be in place from time to time and in this regard. The relevant anti-corruption requirements will be provided to the Trustees by the Founder from time to time;
- 22.4. have been in existence for a minimum of 12 (twelve) months and must be able to demonstrate clear economic flows to ultimate beneficiaries which meet the criteria of the Trust over at least the previous 12 (twelve) months;
- 22.5. be appropriately constituted with a fully operational board of governors or Trustee equivalent;
- 22.6. have a defined set of objectives which are in close alignment with the Objectives;
- 22.7. have no governmental or political affiliations; and
- 22.8. not be Related to any of the Trustees.

## 23. **VESTING OF THE ALLOCATED PORTION IN BENEFICIARIES**

- 23.1. Following the identification, selection and appointment of the potential Beneficiaries as contemplated above, the Trustees shall pass a formal resolution wherein they shall record, in Writing:

- 23.1.1. the Allocated Portion to vest in the Beneficiaries in a particular Financial Year; and

- 23.1.2. any conditions pertaining to the vesting of such Allocated Portion in such potential Beneficiary.
- 23.2. To the extent necessary and practically possible, the Administrator shall, following the resolution in clause 23.1 above, notify each potential Beneficiary in Writing of:
  - 23.2.1. its proposed appointment as a Beneficiary;
  - 23.2.2. the Allocated Portion to be vested in such potential Beneficiary; and
  - 23.2.3. the manner in which such Allocated Portion shall be made available to such Beneficiary,and shall request, unless it is not practical to do so, that such potential Beneficiary either accept or to decline the Allocated Portion awarded to it within 30 (thirty) Days from the date of receipt of such Written notice.
- 23.3. Following the acceptance by a Beneficiary of the Allocated Portion, the Administrator shall be required to maintain a register of Beneficiaries, in which it shall be recorded in Writing;
  - 23.3.1. the name and address of the Beneficiary;
  - 23.3.2. the Allocated Portion, expressed either as a percentage or a specific amount, for that Financial Year to vest in the Beneficiary; and
  - 23.3.3. any conditions pertaining to the vesting of the Allocated Portion in such Beneficiary.

#### 24. **DISTRIBUTION OF THE ALLOCATED PORTION**

- 24.1. Save should the conditions attaching to the vesting of an Allocated Portion not be met or should it be resolved by the Trustees not to proceed with the vesting of an Allocated Portion, the Trustees shall be obliged to distribute the Allocated Portion within a reasonable period after they have passed the formal resolution referred to in clause 23.1 above.
- 24.2. In respect of the distribution of the Allocated Portion, the Trustees can elect, in their Discretion, to:
  - 24.2.1. make a payment directly to a Beneficiary; or
  - 24.2.2. make a payment to a third party on behalf of the Beneficiary.

24.3. In making any distribution of the Allocated Portion, the Trustees shall ensure that reasonable steps are taken to ensure that the Allocated Portion is used by the particular Beneficiary for the purpose for which it is provided, that is, in order to achieve the Objectives.

24.4. For the avoidance of any doubt, any portion of the Allocated Portion, which has not vested, or which has vested and is ultimately not distributed to a Beneficiary, shall be capitalised and shall form part of the Trust Capital and may be invested by the Trustees in terms of this Trust Deed.

## 25. **SCHOLARSHIPS, BURSARIES AND AWARDS**

25.1. Where an Allocated Portion is in the form of scholarships, bursaries or awards, the following additional criteria, as required by the Income Tax Act, shall apply:

25.1.1. all scholarships, bursaries or awards granted by the Trust must be bona fide and be granted to an individual on grounds of objective merit or need;

25.1.2. no scholarship, bursary or award granted by the Trust may:

25.1.2.1. be revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award;

25.1.2.2. be subject to conditions which would enable the Contributor of the funds of that scholarship, bursary or award or any Connected Person in relation to that Contributor, to derive some direct benefit from the application of that scholarship, bursary or award; or

25.1.2.3. be granted to any Person who is or will become an employee of the Contributor of the funds of that scholarship, bursary or award or the Trust (or any associated institution in relation to that Contributor or the Trust) or any relative of that Person, unless circumstances indicate that that scholarship, bursary or award would have been granted to that Person or his or her relative, even if that Person had not been an employee of that Contributor, the Trust or any associated institution;

25.1.3. all decisions regarding the granting of scholarships, bursaries and awards must be made by the Trustees, or a Committee appointed by them; and

25.1.4. all scholarships, bursaries and awards granted by the Trust in respect of overseas study, research or teaching will be subject to an undertaking by the Person to whom the scholarship, bursary or award is granted:

25.1.4.1. to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in South Africa for a period of at least the period that the study, research or training was funded by the Trust.; and

25.1.4.2. if so required in the Discretion of the Trustees, to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in clause 25.1.4.1 above.

25.2. The Trustees will be obliged to provide copies of all documents and information relating to the scholarship, bursary or award and minutes of all meetings at which any scholarship, bursary or award was granted to the Commissioner on request.

## **PART V – GENERAL ADMINISTRATIVE PROVISIONS**

### **26. FINANCIAL YEAR-END**

The Financial Year of the Trust shall commence on the first day of January of each year and end on the last day of December of each Year.

### **27. COSTS OF THE TRUST**

The Trustees shall pay and make provision for all Costs incurred by them on behalf of the Trust out of the income of the Trust Capital, provided that the Trustees shall at all times endeavour to ensure that the Administrative Costs shall not exceed an amount equal to 15% (fifteen percent) of the value of the net after tax Trust Income in any Financial Year, or such other amounts as may be stipulated by the BBBEE Legislation from time to time.

### **28. ADMINISTRATION OF THE TRUST**

In addition to any obligations of any Administrator as set out in this Trust Deed, the Administrator may be tasked with any compliance function required in respect of the Trust and shall be appointed to provide all required support and administration services required by the Trust.

## 29. AMENDMENTS TO THIS TRUST DEED

- 29.1. This Trust Deed has been drafted in order to ensure compliance with the BBBEE Legislation and in particular to ensure that the Trust constitutes a "broad-based ownership scheme" as contemplated in the Codes.
- 29.2. It is therefore agreed that, if at any stage after the Registration Date, any change in South African law or policy (including, without limitation, the BBBEE Legislation occurs (each, a "**Change in Law**")) such that the Founder's BBBEE credentials would be adversely affected as a result of the coming into effect of the Change in Law, then the Trustees will:
- 29.2.1. take all reasonable steps to procure that such appropriate amendments are made to this Trust Deed in accordance with the Founder's instructions; and/or
- 29.2.2. do anything that is necessary and reasonable,
- so that the Founder is placed in the same (or as close to the same, as is reasonably possible) position from a BBBEE perspective that it was in prior to the Change in Law.
- 29.3. Subject to clause 29.2 above, but notwithstanding the remaining provisions of this Trust Deed, this Trust Deed may be amended only by means of a Written deed signed by 75% (seventy five percent) of the Trustees and the Founder, provided that:
- 29.3.1. if an amendment is required in order to enable the Trust to achieve or continue to have PBO status or by reason of the BBBEE Legislation, such amendment shall be made by a Written deed signed only by the Founder;
- 29.3.2. if at any time the Trust enjoys any exemptions from any tax or duty charged or levied under any law administered by SARS, no amendment shall be made until a copy of such amendment has been given to SARS;
- 29.3.3. no such amendment, modification or replacement shall have the effect of conferring a benefit which is not permitted by the Income Tax Act in respect of the Trust, as a PBO.
- 29.3.4. no such amendment, modification or replacement shall have the effect of incorporating objects which are not considered to be Public Benefit Activities within the meaning of the Income Tax Act; and



- 29.3.5. such amendment shall not have a materially adverse effect on the deductibility of Contributions to the Trust. The Trustees and the Founder may agree from time to time what constitutes a "materially adverse effect" as aforesaid and, in the absence of such agreement, any adverse effect on the deductibility of Contributions shall be deemed to have a "*materially adverse effect*".
- 29.4. Any amendments to this Trust Deed in accordance with the provisions of this clause 29 will only take effect if such amendment is:
- 29.4.1. reduced to Writing.
- 29.4.2. signed by or on behalf of the Trustees and the Founder.
- 29.4.3. submitted to the Commissioner for approval in accordance with the requirements of the Income Tax Act; and
- 29.4.4. duly filed with the Master.
- 29.5. No amendment shall be made which will allow the Trust Capital to (i) be directly or indirectly distributed to any Person (other than in the course of undertaking any Trust Activity); and/or (ii) be utilised for a purpose which does not promote the achievement of the Objectives.
- 29.6. Notwithstanding anything to the contrary herein contained, the provisions of this Trust Deed may not be varied in such a way as to make it competent for the Founder or any Trustee to dispose of any part of the Trust Fund for its or his own benefit or for the benefit of his estate.
- 29.7. The exercise by the Trustees of any of the powers conferred on them in terms of this clause 29 shall not give rise to any claim against them, and in particular, but without derogating from the generality of the foregoing, no Beneficiary or potential Beneficiary shall have any action against the Trustees arising from the fact that, by reason of any exercise by the Trustees of the powers conferred on them in terms of this clause 29, they have been excluded as Beneficiaries or their benefits have been restricted or diminished.

### 30. **TERMINATION OF THE TRUST**

- 30.1. Subject to the Shareholders Agreement, the Trust may be terminated upon the earlier of:

- 30.1.1. the date of a Unanimous Resolution to that effect being passed by the Trustees, provided that, for as long as the Trust holds the Community Trust Shares, the prior Written consent of the Founder is obtained in respect of such termination; or
  - 30.1.2. the date on which the entire Trust Capital has been distributed in terms of the provisions of this Trust Deed.
- 30.2. If, upon the dissolution of the Trust, after due provision for all liabilities and expenses, there remain any Trust Capital and/or cash in the Trust Capital, such Trust Capital and/or cash shall be distributed to any:
- 30.2.1. similar PBO which has been approved in terms of section 30 of the Income Tax Act (if the Trust is registered as a PBO at the time of its dissolution);
  - 30.2.2. institution, board or body which is exempt from tax under the provisions of section 10(1) (cA)(i) of the Income Tax Act and which has as its sole or principal object the carrying on of any Public Benefit Activity; or
  - 30.2.3. any department of state or administration in the national or provincial or local sphere of government of South Africa, contemplated in section 10(1)(a) or (b) of the Income Tax Act,
- designated by the Trustees prior to such dissolution and which has a similar object/s to those of the Trust, in particular, the undertaking and/or funding of the Trust Activities for the benefit of Black Persons.

### 31. **CONFLICT RESOLUTION PANEL**

#### 31.1. **Appointment of Conflict Resolution Panel**

The Parties hereby confirm the appointment of the members of the Conflict Resolution Panel in terms of the CRP Agreement. The members of the Conflict Resolution Panel shall be identified in the CRP Agreement from time to time (the **Members**).

#### 31.2. **Powers of Members**

31.2.1. The Conflict Resolution Panel and its Members are appointed for the specific purpose of dealing with any matter where:

31.2.1.1. the Trustees are unable to agree; and/or

31.2.1.2. there is a deadlock; and/or

31.2.1.3. the Founder and Trustees are in disagreement

**(“CRP Dispute”)**

31.2.2. Any 1 (one) of the Parties shall refer a CRP Dispute to a Member of the Conflict Resolution Panel within 5 (five) business days of the occurrence of any of the circumstances listed in clause 31.2.1. Any CRP Dispute so referred shall be allocated to a Member of the Conflict Resolution Panel for resolution in accordance with the provisions of the CRP Agreement.

31.2.3. The Conflict Resolution Panel shall act in accordance with the CRP Agreement, and all Members are bound by such terms.

31.2.4. Each Member shall act in the best interests of the Trust in accordance with the CRP Agreement and shall:

31.2.4.1. consult with or receive advice from any Person (including the Specialists under the CRP Agreement); and

31.2.4.2. have the full authority of the Founder and/or Trustees in respect of any matter referred to it.

31.2.5. The decisions of the Members of the Conflict Resolution Panel are final and binding.

**31.3. Payment of Members**

31.3.1. The Members shall be paid in accordance with the CRP Agreement.

31.3.2. The Trust shall make payment to the Members in accordance with the invoice(s) issued by the Members notwithstanding the Trustees' views on the Members, their decisions or the matters referred to them. All payments to the Members shall form part of the Administrative Costs.

**32. ARBITRATION**

32.1. Subject to clause 32.2, if a dispute of any nature arises between the Parties, including but not limited to:

32.1.1. the interpretation of; or

32.1.2. the carrying into effect of; or

- 32.1.3. any of the Parties' rights and obligations arising from; or
- 32.1.4. the termination or purported termination of or arising from the termination of,

this Trust Deed, or on any matter which, in terms of this Trust Deed, requires agreement by the Parties (other than where an interdict or urgent relief is sought, both of which may be obtained from a court of competent jurisdiction, in which instance, that court shall be the Gauteng Local Division of the High Court), the parties shall try to resolve the dispute by negotiation. This entails that the one party invites the other in writing to a meeting and to attempt to resolve the dispute within 7 (seven) Days from date of the Written invitation.

- 32.2. Any matter capable of referral to the Conflict Resolution Committee, is excluded from referral to arbitration. For the avoidance of doubt, no matter described in clause 31.2.1 shall be capable of referral to arbitration.
- 32.3. If the dispute has not been resolved by such negotiation, the parties shall submit the dispute to AFSA administered mediation, upon the terms set by the AFSA Secretariat. Failing such a resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

33. ***DOMICILIUM CITANDI ET EXECUTANDI***

- 33.1. Each of the Parties chooses its physical address and contact details referred to below as its *domicilium citandi et executandi* at which documents in legal proceedings and any notices in connection with this Trust Deed may be served:

**33.1.1. Founder:**

Physical address: Libanon Business Park  
1 Hospital Street (off Cedar Avenue)  
Libanon  
Westonaria  
1780

Postal address: Private Bag XS  
Westonaria  
1780

Email address: Charl.Keyter@sibanyegold.co.za

Fax number: 011 278 9863

Attention: Charl Keyter

**33.1.2. Trustees:**

Physical address: Libanon Business Park  
1 Hospital Street (off Cedar Avenue)  
Libanon  
Westonaria  
1780

Postal address: Private Bag XS  
Westonaria  
1780

Fax number: 0112789863

Attention: Grant Michael Stuart

Physical address: 793 Klipyster Street  
Heuwelsig Estate  
Celtisdal Ext 20  
Centurion  
0157

Postal address: Private Bag XS  
Westonaria  
1780

Email address: Kgomotso.molebatsi@sibanyestillwater.com

Attention: Kgomotso Mmathuto Molebatsi

Postal address: Private Bag XS  
Westonaria  
1780

Email address: Thabisile.phumo@sibanyestillwater.com

Attention: Thabisile Charity Phumo

Physical address: 35 Stratton  
Bryanston  
2195

Postal address: Private Bag XS  
Westonaria  
1780

Email address: Themba.nkosi@sibanyestillwater.com

Attention: Themba George Nkosi

33.2. Any Person appointed as a Trustee shall provide the Trustees and the Founder through the Administrator once appointed with written details of his physical address and contact details and such physical address and contact details shall be his *domicilium citandi et executandi* for the purpose of this clause 33.

- 33.3. Any notice or communication required or permitted to be given in terms of this Trust Deed shall be valid and effective only if in Writing.
- 33.4. Any Party may by Written notice to the other Party change its chosen addresses or contact details for the purposes of clause 33.1 above to any other physical address(es) or contact details in South Africa, provided that the change shall become effective on the 14<sup>th</sup> (fourteenth) Day after the receipt of the notice by the addressee.
- 33.5. Any notice given in terms of this Trust Deed shall:
- 33.5.1. if sent by a courier service, be deemed to have been received by the addressee on the 7<sup>th</sup> (seventh) Business Day following the date of such sending;
- 33.5.2. if delivered by hand during business hours on a Business Day, be deemed to have been received by the addressee on the date of delivery failing which it will be deemed to have been received on the following Business Day; and
- 33.5.3. if sent by telefax to the telefax number specified in clause 33.1 above, or if sent by email to the email address specified in clause 33.1 above, shall be deemed to have been received within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving Party on a Business Day or within 4 (four) hours of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours or on a Day which is not a Business Day,
- unless the contrary is proved.
- 33.6. Notwithstanding anything to the contrary herein contained, a notice or communication actually received by a Party shall be an adequate notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

#### 34. **GENERAL**

- 34.1. This Trust Deed constitutes the sole record of the agreement amongst the Parties in regard to the subject matter thereof.
- 34.2. To the extent permissible by law, no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether or not it induced this Agreement and/or whether it was negligent or not.

34.3. Save as is expressly permitted by this Trust Deed, no Party may assign any of its rights or obligations under this Trust Deed without the prior written consent thereto of the Founder.

34.4. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Trust Deed.

35. **SEVERABILITY**

Any provision in this Trust Deed which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Trust Deed shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it had never been written (*pro non scripto*) and severed from the balance of this Trust Deed, without invalidating the remaining provisions of this Trust Deed or affecting the validity or enforceability of such provision in any other jurisdiction.

36. **GOVERNING LAW**

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

37. **COUNTERPARTS**

This Trust Deed may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. The Parties may enter into this Trust Deed by signing any such counterpart.

***[THE NEXT PAGE IS THE SIGNATURE PAGE]***

**SIBANYE PLATINUM PROPRIETARY LIMITED**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**GRANT MICHAEL STUART**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**KGOMOTSO MMATHUTO MOLEBATSI**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_



**THABISILE CHARITY PHUMO**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**THEMBA GEORGE NKOSI**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

## **ANNEXURE 1 - RELATED AND INTER-RELATED PERSONS, AND CONTROL**

As at the date of the Trust Deed, section 2 of the Companies Act provides as follows:

### **Related and inter-related persons, and control.**

- (1) For all purposes of this Act—
  - (a) an individual is related to another individual if they—
    - (i) are married, or live together in a relationship similar to a marriage; or
    - (ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;
  - (b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with subsection (2); and
  - (c) a juristic Person is related to another juristic Person if—
    - (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2);
    - (ii) either is a subsidiary of the other; or
    - (iii) a Person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with subsection (2).
- (2) For the purpose of subsection (1), a person controls a juristic person, or its business, if—
  - (a) in the case of a juristic Person that is a company—
    - (i) that juristic Person is a subsidiary of that first Person, as determined in accordance with section 3 (1) (a); or
    - (ii) that first Person together with any related or inter-related Person, is—
      - (aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
      - (bb) has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board;
  - (b) in the case of a juristic Person that is a close corporation, that first Person owns the majority of the members' interest, or controls directly, or has the right to control, the majority of members' votes in the close corporation;
  - (c) in the case of a juristic Person that is a trust, that first Person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or
  - (d) that first Person has the ability to materially influence the policy of the juristic Person in a manner comparable to a Person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c).
- (3) With respect to any particular matter arising in terms of this Act, a court, the Companies Tribunal or the Panel may exempt any Person from the application of a provision of this Act that would apply to that Person because of a relationship contemplated in subsection (1) if the Person can show

that, in respect of that particular matter, there is sufficient evidence to conclude that the Person acts independently of any related or inter-related Person.

## ANNEXURE 2

### CRP AGREEMENT

- 1 **Parties** This Agreement is entered into by and between:
- (a) the **Trustees**;
  - (b) the **Founder**; and
  - (c) each **Member** listed in Appendix 1.
- 2 **Definitions and interpretation** Terms defined in the Trust Deed (as defined below) have the same meaning in this CRP Agreement, changed as necessary, unless given a different meaning in this CRP Agreement.
- In this CRP Agreement:
- (a) **Trust** means the Sibanye Rustenburg Mine Community Development Trust (previously known as the Rustenburg Mine Community Development Trust), IT000198/2016(T);
  - (b) **Trust Deed** means the trust deed of the Trust.
- The interpretation provisions of the Trust Deed shall apply to this CRP Agreement changed as necessary.
- 3 **Background** The Trust provides for the resolution of certain disputes by the Conflict Resolution Panel. This is the CRP Agreement as contemplated by clause 31 of the Trust Deed.
- 4 **Members** The Conflict Resolution Panel shall comprise of 4 (four) legal experts as identified in Appendix 1 to this CRP Agreement (each a **Member**), one of whom will be selected, from Appendix 1 in the order in which they are named pending availability, to act whenever a CRP Dispute as contemplated by clause 31 of the Trust Deed is referred to the Conflict Resolution Panel.
- Each Member listed in Appendix 1 shall remain eligible to act unless a Member:

declines to act; or

is unable to act as a result of death or disability or unavailability within the prescribed time periods contained in the Procedural Rules;

resigns; or

has his appointment terminated.

If a Member is unable to act for any of the reasons stated in the preceding clause, a replacement Member shall be selected from the remaining Members listed in Appendix 1 to this CRP Agreement, it being the intention to select Members in the order in which their names appear in Appendix 1, pending their availability.

The appointment of any Member may be terminated by mutual agreement of the Trustees and Founder but not by either the Trustees (either singly or collectively) or the Founder acting alone.

The replacement Member shall be selected from the names of potential Members in Appendix 2. A replacement Member shall be selected from Appendix 2 in the order in which they are named pending availability.

All signatories to the CRP Agreement agree that the Founder is authorised, on their behalf, to sign an agreement (whether in the form of an addendum to this CRP Agreement or otherwise) with the replacement Member. For the avoidance of doubt, the Trustees and remaining Members specifically appoint the Founder to sign any agreement with a replacement Member.

## 5 **Specialist**

The Specialists comprise of an expert from the:

- (a) financial sector; and
- (b) social investment sector.

The Specialists are named in Appendix 2 to this CRP Agreement.

**6 General Provisions**

The CRP Agreement shall take effect when the Founder, the Trustees and each of the original Members have respectively each signed the CRP Agreement and/or an addendum thereto, as the case may be.

The appointment of each Member for any CRP Dispute referred to them is a personal appointment. No assignment or subcontracting of the CRP Agreement is permitted by each Member without the prior written agreement of the Founder and the Trustees.

**7 Warranties**

The Member warrants and agrees that he/she is and shall be impartial and independent of the Founder, the Trustees and/or any Project. The Member shall promptly disclose, to each of them and to the other Members, any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Founder and the Trustees relied upon the Member's representations that he/she is:

- (a) experienced in the work which the Trustees is to carry out under the Trust Deed,
- (b) experienced in the interpretation of contract documentation and mining in South Africa, and
- (c) fluent in English which shall be the language for communication.

**8 General Obligations of the Member**

The Member shall:

- (a) have no interest financial or otherwise in the Founder, the Trustees or any Trust Activities, nor any financial interest under the Trust Deed except for payment under this CRP Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Founder or the Trustees, except in such

circumstances as were disclosed in writing to the Founder and the Trustees before they signed this CRP Agreement;

- (c) have disclosed in writing to the Founder, the Trustees and the other Members, before entering into the CRP Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Founder, the Trustees;
- (d) not, for the duration of this CRP Agreement, be employed as a consultant or otherwise by the Founder or the Trustees, except as may be agreed in writing by the Founder, the Trustees and the other Members;
- (e) comply with the annexed procedural rules attached as Appendix 3 and with clause 31 of the Trust Deed;
- (f) not give advice to the Founder, or the Trustees other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Founder or the Trustees regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under this CRP Agreement;
- (h) ensure his/her availability for any site visit and meetings as are necessary; and
- (i) treat the details of the contract and all the Conflict Resolution Panel's activities as private and confidential, and not publish or disclose them without the prior written consent of the Founder or the Trustees and the other Members, unless required to do so by law.

- 9      **General Obligations of the Founder and the Trustees**      The Founder and the Trustees shall not request advice from or consultation with the Member regarding the Trust Deed, otherwise than in the normal course of the Conflict Resolution Panel's activities under the Trust Deed and this CRP

Agreement, and except to the extent that the Founder and the Trustees give prior agreement.

The Founder and the Trustees undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Founder and the Trustees:

- (a) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Trust Deed; or
- (b) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Founder and the Trustees hereby jointly and severally indemnify and hold the Member harmless against any from claims from which he/she is relieved from liability under the preceding paragraph.

**10 Payment**

A Member shall be paid within 28 days of receipt of an invoice for any CRP Dispute referred to them in accordance with the provisions of clause 31 the Trust Deed.

The Members' hourly rate is as stated in Appendix 1 (or Appendix 2 as may be applicable). On the anniversary of the signature date of this CRP Agreement the rate shall be escalated annually by the percentage stated in Appendix 1 (or Appendix 2 as may be applicable). The Members' shall be paid as follows

- (a) a daily fee shall be considered as payment in full for:
  - (i) each working day spent reading submissions, preparing decisions, or making site visits (if any); and
  - (ii) each day or part of a day up to maximum of two days' travel time in each direction for the journey (if any) between the Member's home and site or



another location of a meeting with a Specialist (if any) and/or the Founder and the Contractor;

- (b) all reasonable expenses incurred in connection with the Member's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (a) of this Clause; and
- (c) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 10.

The daily fee shall be the amount stated in Appendix 1 (or Appendix 2 as may be applicable).

Invoices shall be submitted monthly on the last business day of the month in which work is done by the Member.

The Member shall not be obliged to engage in activities under the CRP Agreement until it has been paid in full for invoices submitted under this paragraph.

The Member shall not be obliged to render its decision until invoices for all daily fees and expenses for making a decision is paid in full.

If the Trustees fail to pay to the Member the amount to which he/she is entitled under the Trust Deed, the Founder shall pay the amount due to the Member and any other amount which may be required to ensure a decision is rendered; and without prejudice to the Founder's rights or remedies. In addition to all other rights arising from this default, the Founder shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums.

**11 Default of the Member**

If the Member falls to comply with any obligation under Clause 8 of this CRP Agreement, he/she shall not be entitled

to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Founder and the Trustees for any fees and expenses received by the Member, for proceedings or decisions (if any) of a Member which are rendered void or ineffective.

12 **Disputes**

Any dispute or claim arising out of or in connection with this CRP Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

**[Signature clause]**

**APPENDIX 1 MEMBERS OF THE CONFLICT RESOLUTION PANEL**

<b>Name</b>	<b>Contact Details</b>	<b>Hourly Rate</b>	<b>Daily Rate</b>	<b>Escalation</b>

**APPENDIX 2 – REPLACEMENT MEMBERS OF THE CONFLICT RESOLUTION PANEL**

	<b>Name</b>	<b>Contact Details</b>	<b>Hourly Rate</b>	<b>Daily Rate</b>	<b>Escalation</b>

**SPECIALIST – FINANCIAL**

	<b>Name</b>	<b>Contact Details</b>	<b>Sitting Fee</b>	<b>Daily Rate</b>	<b>Escalation</b>

**SPECIALIST – SOCIAL DEVELOPMENT**

	<b>Name</b>	<b>Contact Details</b>	<b>Sitting Fee</b>	<b>Daily Rate</b>	<b>Escalation</b>

### **APPENDIX 3 – PROCEDURAL RULES**

- 1 The Founder and the Trustees shall furnish to the Member selected to decide a CRP Dispute one copy of all documents which the Member may request, including Trust Deed documents, Project information, progress reports, certificates and other documents pertinent to CRP Dispute. All communications between the Member and the Founder or the Trustees shall be copied to the other Party.
- 2 The Member shall proceed in accordance with clause 31 of the Trust Deed, the CRP Agreement and this Appendix 3. The Member shall:
  - (a) act fairly and impartially as between the Founder and the Trustees and/or the Trustees themselves, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
  - (b) adopt procedures suitable to the referral, avoiding unnecessary delay or expense.
- 3 The Founder, Trustees and the Members agree that any CRP Dispute referred to any Member is capable of a decision on written submission and no hearing is required.
- 4 The Founder and/or the Trustees (singly or collectively) shall submit its representations to the Member within 28 days of the referral of the CRP Dispute to the Member. Within 10 days of the initial written submissions any of the parties may make further written submissions to the Member. Within 10 days of the last written representations, the Member shall issue clarification queries to any or all of the parties which clarifications shall be answered within 10 days of receipt. The Committee shall issue its decision within 10 days of last receipt of information. If so required, the Member shall, in his/her sole discretion, ask a Specialist for input. The Member shall select the Specialist from Appendix 2 to the CRP Agreement. The Specialist shall issue his/her invoice to the Trust, which invoice shall be paid on the same terms as set out in clause 7 of the CRP Agreement. For the avoidance of doubt, any decision issued by a Member is final and binding.
- 5 Except as otherwise agreed in writing by the Founder and the Trustees, a Member shall have the power to adopt an inquisitorial procedure, and to proceed in the absence of any party who the Member is satisfied received notice of the dispute; but shall have discretion to decide whether and to what extent this power may be exercised.
- 6 The Founder and the Trustees empower the Committee, among other things, to:
  - (a) establish the procedure to be applied in deciding a dispute provided that the time periods listed in paragraph 4 are complied with unless the Founder and the Trustees agree otherwise,

- (b) decide upon the Member's own jurisdiction, and as to the scope of any matter referred to it,
  - (c) conduct any dispute as It thinks fit, not being bound by any rules or procedures other than those contained in the Trust Deed and the CRP Agreement,
  - (d) take the initiative in ascertaining the facts and matters required for a decision,
  - (e) make use of its own specialist knowledge, if any, and
  - (g) decide upon any provisional relief such as interim or conservatory measures, pending a decision.
- 7 No Member shall express any opinions concerning the merits of any arguments advanced by the Parties. Thereafter, the Member shall make and give her decision in accordance with this CRP Agreement.

**ANNEXURE 3: OPERATING MODEL**



**SIBANYE RUSTENBURG MINE  
COMMUNITY DEVELOPMENT  
TRUST OPERATING MODEL**

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## 1. Introduction

The Sibanye Rustenburg Mine Community Development Trust (previously known as the Rustenburg Mine Community Development Trust (the **Trust**) was established and registered with the Master of the High Court on 27 January 2016 under IT000198/2016(T) as a BBBEE vehicle through which primarily Black Persons who are members of the Community will derive benefits from the Company, which Company in turn holds shares in SRPM. The Trust is a vehicle to give effect to the Sibanye Stillwater purpose of "improving lives" thereby "creating superior value for all its stakeholders."

This document is the 'Operating Model' as defined in the Trust Deed.

## 2. Definitions and interpretation

2.1 Terms defined in the Trust Deed have the same meaning in this Operating Model, changed as necessary.

2.2 The interpretation provisions of the Trust Deed shall apply to this Operating Model, changed as necessary.

## 3. Ranking of this Operating Model

This Operating Model is subject to the terms of the Trust Deed and, in the event of a conflict between any provisions of this Operating Model and the provisions of the Trust Deed, the provisions of the Trust Deed shall prevail. This Operating Model is a Policy, which may be amended from time to time by the Founder. Any such amendments shall be made available in writing to the Trust and the Trustees by the Founder.

## 4. Objectives of the Trust

The Objectives are set out in the Trust Deed. As at the date of this Operating Model, the Objectives are as follows:

5.1 The purpose and objects of the Trust shall be to acquire the Community Trust Shares, to hold the Community Trust Shares as a Trust Asset for the benefit of the Beneficiaries and to enhance the material benefits and moral welfare of the Beneficiaries in any way that the Trustees may from time to time decide including the creation, through the Trust, of a platform for external investment, and thereby advancing, in particular:

5.1.1 education, training and bursaries and more specifically so in the mining and related industries;

- 5.1.2 sustainable health and social development within the Community and amongst the Beneficiaries;
- 5.1.3 the rehabilitation of the natural environment of the Community through establishing synergy with the Rustenburg Operations' rehabilitation programme;
- 5.1.4 entrepreneurship within the Community;
- 5.1.5 sustainable economic development within the Community; and
- 5.1.6 the upliftment and empowerment in general of the Beneficiaries, in particular the empowerment of women, youth and people with disabilities within the Community."

## **5. Day to day operation of the Operating Model**

There are a range of options that the Trust could have considered in outlining this Operating Model. However, to simplify the process and to create transparency for the Beneficiaries, it was agreed to work with an Operating Model that is based on the the principle that all proposals for funding to be considered by the Trust will be based on 'Call for Proposals'. Below is a summary of the Operating Model flow from Step 1 to Step 7.



## 6. Approach to Operating Model: Step-by-Step Guide

### 1 Step 1: Governance and due diligence

1. The Trust Administrator presents to the Trustees an updated socio-economic infographic and Needs Assessment for the Community needs including vulnerable groups, women, youth, children and persons living with disabilities) within the Beneficiary Communities
2. The Trustees evaluate and prioritise funds remaining in the bank account to be allocated for socio-economic empowerment of the Beneficiaries in the respective Communities as outlined in the Trust Deed.
3. A resolution is then passed by the Trustees to set aside a budget to advertise the Request for Proposals in local community newspapers with the Trust Administrator being the contact point. This will occur bi-annually.

### 2 Step 2: Calls for Proposals from the Public

1. The Request for Proposals shall be open for a period of three weeks to a month from the date of being published in local community newspapers in Rustenburg Local Municipality.
2. Within two months after the closing date for the Request for Proposals, the Trustees will convene a meeting to discuss the applications received and exercise their discretion to approve any such applications, subject to a satisfactory due diligence being done by the Trust Administrator in respect of each application as described more fully below.

### 3 Step 3: Vetting proposals and eligibility criteria

1. One week after the closing date of the Request for Proposals the Trust Administrator to conduct the initial vetting of the proposals in line with the Eligibility Criteria set out below under Step 3: Point 8
2. The Trust Administrator will provide a presentation summary of Accepted Proposals and the areas of focus that they fall under; name of the organisation; how the organisation meets the criteria for beneficiation in line with the Trust Deed objectives; period of support; budget and monitoring and evaluation systems in place.
3. The proposals that have passed the initial stage of the vetting process will be packaged into a Board Pack to be shared with the Trustees within 14 days prior to the Trustees' meeting.
4. A separate Board Pack of Rejected Applications will be prepared by the Trust Administrator to be circulated to the Trustees, providing a summary of the reasons for the recommendation to reject the application.
5. The Trustees will, by written resolution, approve presented proposals or request additional information from tentatively accepted proposals, or reject proposals presented.
6. The Trustees, through the Chairperson of the Trustees, will write a letter of acceptance of the successful proposals detailing the process of distribution of the approved project proposal, which will be drafted by the Trust Administrator.
7. A written letter of rejection of proposals to be drafted by the Trust Administrator signed by the Chairperson of the Trustees providing a summary of reasons for rejection.
8. To ensure compliance with the objectives set out in the Trust Deed, the Trustees will, inter alia, apply the following **Eligibility Criteria** in respect of applications:
  - a. Applicants must have a mission and implement community empowerment programmes that are community based and should include beneficiaries that include vulnerable groups which include women, youth, children and persons with disabilities
  - b. Applicants must have a clear strategic vision for the organization, and an articulation of how this vision will assist the organization to address the needs of targeted beneficiaries in the beneficiary communities
  - c. Applicants must possess experience and expertise in implementing community empowerment programmes or projects in the beneficiary communities
  - d. Applicants must be a legally registered Public Benefit Organisation from the South African Revenue Services (SARS) and be located within the beneficiary community;
  - e. Applicants must demonstrate the ability to operate a well-managed and financially viable operation by submitting 1 - 2 years of financial statements and letter of reference from past and current funders;
  - f. Applicants must provide evidence of financial management systems and capacity for resource mobilization as contained within the submitted financial statements and or service provider providing accounting services to the organisation; and,
  - g. Applicants must provide sound and strong track record of success and impact of past and current projects implemented in the beneficiary communities.

#### 4 Step 4: Administration and Distribution of Funds

1. The Trust Administrator must ensure that a Grant Agreement (contract) is prepared, to be approved and signed by the Trustees [and approved organisations] before funds are to be transferred into the account of the Grant Beneficiary .
2. The approved project's principal must submit the Project Implementation Plan with a Monitoring and Evaluation Plan to the Trustees.
3. The Administrator and project principal must work out a flow of resources to ensure the project is concluded in time and under budget. The approved project principle must sign this agreement before any monies flow.
4. The Trust Administrator, authorised in terms of a resolution of the Trustees, will distribute funds into the bank accounts of approved organisations.
5. All payments must be approved by 2 Trustees to ensure monies are allocated correctly on a monthly basis.
6. The Trust Administrator to liaise with the Chairperson of the Trustees to schedule a 2<sup>nd</sup> Trustees' meeting 6 months after the distribution of funds to Beneficiaries of the first round of approved proposals.
7. The 2<sup>nd</sup> Trustees' meeting is to review project progress reports and to prepare for the 2<sup>nd</sup> round of Call for Proposals.
8. The Trust Administrator must alert the project Beneficiaries to share project narrative and financial reports using the following timeframes:
  - a. 6 months after the funds are distributed
  - b. 12 months after the funds are disbursed
9. The Trust Administrator to determine the number of times they will conduct a review of the project implementation plan.
10. The Trustees shall be empowered to distribute the income of the Trust in support of Beneficiary communities from time to time:
  - o if there is any income available after they have given effect to the payment of all Costs, for making distributions thereof in such proportions as they, in consultation with the Founder may from time to time determine;
  - o these funds will be allocated to registered NGO's, CBO's, charitable, educational or religious organisations charitable works excluding construction of church buildings, bursary and other skills funds, bodies and causes, provided always that at least 85% of the benefits derived from or accruing to any person/ organisations are enjoyed by 85% Black Beneficiaries residing within Rustenburg Local Municipality.
11. The Trustees shall reinvest any of the income not committed to Trust expenses or distributed to Beneficiaries.
12. In cases where there are deviations, the Trust Administrator must ensure that the Grant Beneficiary has adhered to all the rules and regulations as set out in the Grant Agreement and received a written application from the Grant Beneficiary providing reasons for the application of a deviation.
13. An Application for a deviation should not be longer than 6 months and where the Grant Beneficiary has failed to utilise the funds allocated, all the monies should be transferred back to the Trust Bank Account within 30 days of the expiration of the 6 months of application of deviation.

## 5 Step 5: Record Keeping

1. The Trust Administrator is accountable to electronically safely store and archive the Accepted and Rejected Proposals.
2. The Trust Administrator must review past successful and impactful projects for continued support over a multi-year period by the Trustees where deemed necessary.
3. A record of narrative and financial statements of Grant Beneficiary s to be kept for the duration that the organisation is still actively implementing funded projects for reference and audit purposes.
4. The Trust Administrator must ensure that record keeping of Grant Beneficiary s are safely stored in line with the Protection of Personal Information Act of 2013 (POPIA).

## 6 Step 6: Oversight visits to project sites

1. The Trustees will ensure that all successful projects will be monitored as the per the evaluation template in Annexure 3
2. The Trustees will ensure that the Trust Administrator puts systems in place to ensure that all projects are monitored on a quarterly basis and oversight reports are shared 4 times a year with the Trustees.
3. The Trust Administrator to flag where deviations are necessary due to unforeseen circumstances by the Grant Beneficiary , that the organisation prepares a written application in time for the Trustees to consider and approve or reject the application for deviation.
4. The Trust Administrator must monitor progress once a month where deviations have been approved by the Trustees to ensure that project deliverables are met within a 6-month period.
5. Where the Trust Administrator suspects maladministration, Trustees to be notified in writing detailing concerns and shared with Sibanye-Stillwater Internal Audit Department for further investigation.

## 7 Annexure 1: Ten Guidelines for Applicants preparing proposals

1. Provide an organisational profile which includes skills and expertise of the team implementing the project.
2. Summarise the project in 2(two) paragraphs.
3. What is the project goal (problem statement)
4. How is your project aligned to the objectives of the Trust.
5. Provide a project plan outlining the milestones, budget, monitoring and evaluation.
6. What activities will you undertake to ensure delivery of the project.
7. Outline the beneficiary communities' role in the project.
8. Provide information on any partnerships with other organisations in implementing the project.
9. If there are other funding sources, please disclose these in the application.
10. Please explain how will you ensure that this project is sustainable beyond the funding that you are applying for.

8 Annexure 2 : Call for Proposals Template

Name of Organisation	
PBO Number of Organisation/NGO Number ( <b>Attach supporting documentation i.e Valid and certified NGO Certificate not more than 3 months</b> )	
Name of Project	
Contact Person	
Contact Details ( <b>Office/Cell number/Fax &amp; Postal/ Email Address/Office Address</b> )	
A brief history of the organisation ( <b>Not more than 800 words and attach any necessary documentation</b> )	
Description of the organization; including governance/management structure and information/documentation on past experience/activities relevant to this call ( <b>Not more than 800 words and attach any necessary documentation</b> )	
Total Project Budget ( <b>In Rands</b> )	
Duration of Project ( <b>Not more than 12 months</b> )	
Geographic Location of Project ( <b>Rustenburg Local Municipality</b> )	
Short Description of Project ( <b>Not more than 800 words- Attach report</b> )	
Rationale for Project ( <b>Not more than 800 words-Attach report</b> )	



Overall Goal of the Project ( <b>Not more than 100 words- Attach report</b> )	
Activities of the Project ( <b>Not more than 100 words</b> )	
Success Indicators( <b>Not more than 100 words</b> )	
Targeted Beneficiaries( <b>Not more than 100 words</b> )	
Monitoring and Evaluation of Project	
Conflict of Interest Declaration	

9 **Annexure 3: Monitoring and Evaluation Plan (for applicant and Trust use)**

Results	Project Indicators of Success  <i>(What are the key indicators that demonstrate project achievement of project goal, objectives and activities?)</i>	Targets-Beneficiaries ( <b>What is the geographic location, project beneficiaries and demography of project beneficiaries?</b> )	Means of Verification ( <b>How will the Trustees verify that beneficiaries have benefited from the project in line with the Trust objectives?</b> )	Risks/Assumptions ( <b>Which factors are necessary to achieve the project goal and objectives? Which risks should be taken into consideration?</b> )
Goal: <b>What is the Project Goal?</b>				
Objective 1: ( <b>Are the objectives aligned to the Trust Objectives</b> )				
Objective 2:				
Objective 3:				
Activity 1: ( <b>What outcomes/activities</b> )				

<b><i>undertaken to demonstrate project progress/success)</i></b>				
Activity 2:				