

DEED OF TRUST

creating

THE KGALAGADI RELIEF TRUST

1. Introduction

- 1.1 Becon will establish the Kgalagadi Relief Trust (“KRT”) and make certain contributions to the KRT for the purpose of providing financial relief on a purely voluntary basis to individuals who have contracted an ARD attributable either wholly or partially to their Significant Exposure to asbestos dust and/or fibre at or near an asbestos mining and/or milling operation in South Africa which was directly or indirectly owned and/or operated by the Asbestos Investments Group during the Qualifying Period.
- 1.2 The funds for the payment of Grants shall be made available to the KRT from time to time by Becon and paid to Beneficiaries in accordance with this Deed.
- 1.3 The Reasonable Administration Costs incurred by the KRT in the execution of its functions shall be made available to the KRT from time to time.
- 1.4 Accordingly, the KRT is hereby established.

2. Definitions and Interpretation

- 2.1 In this Deed:
 - 2.1.1 “**Applicant**” means a person who has submitted an Application to the KRT as Dependant, Environmental or Occupational Applicant;
 - 2.1.2 “**Application**” means an application to the KRT for a Grant in respect of the contraction of an ARD attributable either wholly or partially to Significant Exposure to asbestos dust and/or fibre at or near an asbestos mining and/or milling operation in South Africa which was directly or indirectly owned and/or operated by the Asbestos Investments Group during the Qualifying Period;
 - 2.1.3 “**ARD**” means asbestos-related disease;

- 2.1.4 **“Asbestos Investments Group”** means Asbestos Investments (Proprietary) Limited, a company which was registered in accordance with the laws of South Africa as well as DCBA, KCBA and/or any other of its former Subsidiaries;
- 2.1.5 **“asbestos-related disease”** means mesothelioma, asbestos-related lung cancer, asbestosis and/or asbestos-related pleural thickening but does, for the avoidance of doubt, not include asymptomatic pleural plaques;
- 2.1.6 **“asbestos-related lung cancer”** means a bronchial or other carcinoma of the lung together with bilateral pleural thickening;
- 2.1.7 **“Asbestos Relief Trust”** means the Asbestos Relief Trust, an *inter vivos* trust established in accordance with its trust deed and registered in accordance with the laws of South Africa on 17 March 2003 under registration number IT 1734/2003;
- 2.1.8 **“Auditors”** means the auditors from time to time of the KRT;
- 2.1.9 **“Becon”** means Becon AG, a company registered in accordance with the laws of Switzerland which has its principal place of business at Talstrasse 83, CH – 8001, Zurich, Switzerland;
- 2.1.10 **“Becon Group”** means:
- 2.1.10.1 Becon;
 - 2.1.10.2 each of Becon’s former or present direct or indirect Subsidiaries, associated and/or affiliated companies, partnerships, joint ventures, trusts and/or other entities;
 - 2.1.10.3 the former or present direct and indirect shareholders of Becon and of Becon’s former or present direct or indirect Subsidiaries, associated and/or affiliated companies as well as the direct and indirect Subsidiaries of any of these companies, entities and/or shareholders; and/or

- 2.1.10.4 the former, present or future directors, officers and/or employees of any of these companies, entities or persons anywhere in the world from time to time;
- 2.1.11 **“Beneficiary”** means a member of the Class of Persons who is an Applicant and who qualifies to receive payment of a Grant by virtue of the submission to the KRT of a successful Application;
- 2.1.12 **“Class of Persons”** means any and all of those persons:
- 2.1.12.1 who lived at or near and/or were employed at any Qualifying Operation at any time during the Qualifying Period and who had Significant Exposure to asbestos dust and/or fibre at that time and place and who have contracted an ARD,
- 2.1.12.2 and, in instances where any such persons have died of mesothelioma or asbestos-related lung cancer, the legal dependants of such persons, i.e. the individuals to whom such persons owed a duty of support, whether such duty arose under common law or statute (such persons also being referred to as “dependants”), provided that the dependant makes the application within three years of the death of the person concerned;
- 2.1.13 **“CCOD”** means the Compensation Commissioner for Occupational Diseases appointed pursuant to the provisions of ODIMWA;
- 2.1.14 **“COIDA”** means the Compensation for Occupational Injuries and Diseases Act 130 of 1996 (as amended) or any successor thereto;
- 2.1.15 **“Deed”** means this trust deed together with all schedules and annexes to this trust deed;
- 2.1.16 **“DCBA”** means Danielskuil Cape Blue Asbestos (Proprietary) Limited, a company which was registered in accordance with the laws of South Africa;
- 2.1.17 **“Dependant Applicant”** means a Dependant, as contemplated in clause 2.1.12.2, who makes an Application within three years of the death of the

person concerned;

- 2.1.18 **“Dependant Application”** means an Application for payment of a Grant submitted to the KRT by a Dependant Applicant;
- 2.1.19 **“Environmental Applicant”** means a person who had Significant Exposure to asbestos dust and/or fibre while he or she lived at or near a Qualifying Operation during the Qualifying Period and who has contracted an ARD;
- 2.1.20 **“Environmental Application”** means an Application for payment of a Grant submitted to the KRT by a person who contracted an ARD as a result of Significant Exposure to asbestos dust and/or fibre at or near a Qualifying Operation during the Qualifying Period;
- 2.1.21 **“Financial Year”** means the financial year of the KRT, being the twelve month period from the beginning of March to the end of February of each year;
- 2.1.22 **“Grant”** means the payment of an amount of money provided for in this Deed to a member of the Class of Persons by virtue of the submission to the KRT of a successful Application;
- 2.1.23 **“ILO”** means the International Labour Organisation;
- 2.1.24 **“KCBA”** means Kuruman Cape Blue Asbestos (Proprietary) Limited, a company which was registered in accordance with the laws of South Africa;
- 2.1.25 **“MBOD”** means the Medical Bureau for Occupational Diseases;
- 2.1.26 **“Mr Spoor”** means Richard Spoor, an adult male attorney of 35 Hendrik Potgieter Street, Nelspruit, South Africa;
- 2.1.27 **“NNS”** means Ntuli Noble & Spoor Inc, a firm of attorneys and conveyancers which has its principal place of business at 35 Hendrik Potgieter Street, Nelspruit, South Africa, each of its directors, shareholders

and/or employees as at the date on which this Trust Deed is signed, any successors to the business of NNS and/or any future director or shareholder of NNS or any successor to the business of NNS;

- 2.1.28 **“Occupational Applicant”** means a person who had Significant Exposure to asbestos dust and/or fibre during the course of his or her employment at any Qualifying Operation at any time during the Qualifying Period and who has contracted an ARD;
- 2.1.29 **“Occupational Application”** means an Application for payment of a Grant submitted to the KRT by a person who contracted an ARD as a result of Significant Exposure to asbestos dust and/or fibre during the course of his or her employment at or near a Qualifying Operation during the Qualifying Period;
- 2.1.30 **“ODIMWA”** means the Occupational Diseases in Mines and Works Act 78 of 1973 (as amended) or any successor thereto;
- 2.1.31 **“Qualifying Operation”** means any asbestos mining and/or milling operation in South Africa which was directly or indirectly owned and/or operated by the Asbestos Investments Group at any time during the Qualifying Period;
- 2.1.32 **“Qualifying Period”** means the period 1 January 1952 to 30 September 1981;
- 2.1.33 **“Reasonable Administration Costs”** means any and all costs and/or expenses (other than the payment of Grants) reasonably incurred by the KRT in the course of conducting its business and includes without limitation the costs and expenses incurred in administering the KRT, receiving, processing and verifying Applications, procuring medical examinations in relation to any Applicants, preparing and processing Grants, obtaining legal, medical and/or other expert or professional advice, paying the fees and disbursements, as determined by the Trustees, of third parties who provide legal or other assistance to Applicants to prepare and lodge their Applications, recovering monies due to the KRT and/or otherwise protecting the rights of the KRT,

paying Trustees' fees and any expenses reasonably incurred by them in the course of conducting the business of the KRT, paying audit fees, paying management fees and/or administration costs due to the Asbestos Relief Trust in terms of any agreement between it and the KRT and/or dissolving the KRT for any reason whatsoever;

2.1.34 “**Significant Exposure**” means exposure to asbestos dust and/or fibre which, in the opinion of the Trustees, was reasonably sufficient to have contributed materially to the contraction of an ARD;

2.1.35 “**Subsidiary**” means any company wholly or partially controlled by another company or other legal entity through the ownership of its shares;

2.1.36 “**Trust**” means the Kgalagadi Relief Trust, an *inter vivos* trust to be established in terms of this Deed and registered in accordance with the laws of South Africa;

2.1.37 “**Trust Deed**” means this trust deed providing for the establishment of the KRT;

2.1.38 “**Trust Doctors**” means independent and suitably qualified medical doctors accredited from time to time by the Trustees; and

2.1.39 “**Trust Funds**” means such funds for the payment of Grants, Reasonable Administration Costs and/or specific community projects as detailed in clause 9.2.15, as may be held by the Trustees from time to time, including as a result of payments made by Becon to the KRT; and

2.1.40 “**Trustees**” means the trustees from time to time of the KRT.

2.2 In this Deed, unless inconsistent with the context:

2.2.1 words referring to the singular include the plural and *vice versa*;

2.2.2 words referring to persons include natural persons and legal entities;

- 2.2.3 if any definition confers or imposes substantive rights or obligations on any party to this Deed, such rights and obligations shall be of force and effect notwithstanding the fact that they are contained in a definition;
- 2.2.4 where any number of days is prescribed, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday in South Africa in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday; and
- 2.2.5 expressions in this Deed shall bear the same meaning as in schedules or annexes to it which do not themselves contain their own definitions.
- 2.3 Any annexes or schedules to this Deed shall be deemed to form part of this Deed.
- 2.4 The expiry or termination of this Deed shall not affect such of the provisions of this Deed as are intended to operate after such expiry or termination or as must, by necessary implication, continue to have force and effect after such expiry or termination, notwithstanding that the relevant clauses do not themselves provide for this.

3. Creation of the Kgalagadi Relief Trust

- 3.1 Becon hereby establishes the Kgalagadi Relief Trust by donating ZAR 100.00 to the Trustees in their capacity as such, which donation is irrevocable.
- 3.2 The Trust created in terms of this Deed shall be known as the KRT.

4. Primary Object of the KRT

The primary object of the KRT is to make payment of Grants to Beneficiaries as fully, fairly and effectively as its means allow, subject to the qualifications and limitations of this Deed and the Schedule of Grant amounts which shall be

furnished to the Trustees from time to time by Mr Spoor.

5. Legal Capacity of the KRT

5.1 The KRT shall, to the extent possible, have all the incidents and powers which attach to a separate juristic person in terms of the laws of South Africa.

5.2 The KRT may sue or be sued in its own name.

6. General Provisions Applicable to the KRT

6.1 Payment of Grants

6.1.1 The KRT shall be responsible for the payment of Grants, provided that its obligations in this regard shall be limited to the Trust Funds held by the Trustees from time to time. The Trustees shall not make payment of any Grant unless they hold Trust Funds sufficient to effect such payment.

6.1.2 Such Grants shall be paid out of Trust Funds expressly budgeted and set aside by the Trustees for this purpose.

6.1.3 The Trustees shall ensure that no award is made to a Beneficiary unless and until said Beneficiary has furnished a signed undertaking of release and discharge (substantially in form of Annex "A" hereto) in favour of the Becon Group.

6.1.4 The Trustees acknowledge and accept that the Trust is the duly appointed agent of the Becon Group for the purposes of the acceptance of the benefits conferred upon its members under this clause. The Trustees acknowledge and accept that they are obliged to and will sign (and accept on behalf of Becon and the Becon Group) said undertaking of release and discharge before making any award to Beneficiaries.

6.2 Payment of Costs

- 6.2.1 The KRT shall be responsible for the payment of all its own expenses including its Reasonable Administration Costs.
- 6.2.2 Such expenses shall be paid out of Trust Funds expressly budgeted and set aside by the Trustees for this purpose.

7. General Provisions Applicable to Trustees

7.1 Number of Trustees

- 7.1.1 A first trustee shall be agreed between Becon and Mr Spoor. This Trustee shall be a person with professional qualifications and/or experience appropriate for the administration of the KRT. This Trustee shall act as the interim Chairperson (until such time as three Trustees have been appointed and they appoint a Chairperson) and shall be authorised to attend to all matters of the KRT, including attending to all matters of an administrative nature including opening bank accounts.
- 7.1.2 Within three months of the registration of the KRT the number of Trustees in office shall be increased to three, by Mr Spoor's nomination of one Trustee and by Becon's nomination of one Trustee.

7.2 Furnishing of Security

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

7.3 Exercise of Powers and Performance of Duties

The Trustees shall at all times observe and comply with the provisions of this Deed in the exercise of their powers and/or the performance of their duties.

7.4 Liability of Trustees

Provided that a claim does not arise from a Trustee's own gross negligence, fraud or wilful default in the exercise of any powers or performance of any duties under this Deed:

7.4.1 no Trustee shall be personally liable for any loss suffered by the KRT and/or any Beneficiary; and

7.4.2 the Trustees shall be indemnified by the KRT against all and any claims made against them or any of them arising out of or in connection with any act or omission in the course of administering the KRT.

7.5 Disqualification of Trustees

A person shall be disqualified from being appointed as a Trustee and a Trustee shall be disqualified from acting as such and if he or she:

7.5.1 has been placed in sequestration, whether provisional or final, or has committed an act of insolvency as defined in the Insolvency Act 24 of 1936 (as amended) or any successor thereto;

7.5.2 has been declared to be insane or is otherwise incapable of managing his or her own affairs;

7.5.3 has been convicted of a criminal and/or a civil offence involving dishonesty under the laws of South Africa or under the laws of any other country; and/or

7.5.4 has resigned as a Trustee on not less than four weeks' written notice to the remaining Trustees.

7.6 Vacation of Office

7.6.1 A Trustee shall cease to hold office as such:

7.6.1.1 if he or she becomes disqualified from acting as a Trustee in terms

of clause 7.5 above;

- 7.6.1.2 if he or she is requested to resign as Trustee by the person responsible for his or her appointment as Trustee; and/or
 - 7.6.1.3 on expiry of the notice period in the event of his or her resignation as Trustee, provided that a Trustee must give the remaining Trustees not less than four weeks' written notice of his or her resignation.
- 7.6.2 A Trustee who ceased to hold office as such in terms of this clause 7.6 shall have no claim against the KRT, the Trustees or any other person arising out of or in connection with his or her vacation of office.

7.7 Power of Assumption and Appointment of Successors

- 7.7.1 If, during the existence of the KRT, any Trustee dies, resigns or is otherwise removed from office, another Trustee shall be nominated by the party that nominated the Trustee being replaced.
- 7.7.2 If any Trustee dies, resigns or is otherwise removed from office and the party entitled to nominate another Trustee in accordance with clause 7.7.1 above is for any reason unable to make such nomination, his or its right of nomination shall be exercised by his or its successor, or, if no successor has been nominated, by the remaining Trustees.
- 7.7.3 A nomination by a Trustee contemplated in clause 7.7.2 above shall be in writing and shall be lodged with the Chairperson of the KRT.
- 7.7.4 Each successor appointed as a Trustee in terms of this clause 7.7 shall, upon his or her written acceptance thereof, be vested with and be bound by all the powers and duties of a Trustee appointed in terms of this Deed.
- 7.7.5 No Trustee shall be entitled to nominate another Trustee to fulfil his or her duties or to exercise the powers of a Trustee on his or her behalf.

8. Provisions Applicable to Decisions of Trustees

8.1 Appointment of Chairperson

- 8.1.1 The Trustees may appoint a Chairperson for any period not exceeding one year or for a specific meeting.
- 8.1.2 The Chairperson shall have a casting vote in respect of any decision to be taken by the Trustees.
- 8.1.3 The Trustees may determine what administrative functions and powers may be exercised by the Chairperson.

8.2 Recusal of Trustees

A Trustee shall recuse himself or herself from any meeting or other occasion when any matter is considered and/or decision taken the outcome of which will or may accrue to the advantage or disadvantage of the Trustee, his or her family member, friend or business associate or any entity in which the Trustee has any direct or indirect interest.

8.3 Meetings of Trustees

- 8.3.1 The Trustees shall meet in Johannesburg (unless the Trustees unanimously agree otherwise):
 - 8.3.1.1 for an annual general meeting at which the KRT's financial accounts for that Financial Year shall be presented for consideration and approval by the Trustees; and
 - 8.3.1.2 at such other times as any of the Trustees may deem necessary.
- 8.3.2 If any of the Trustees deems it necessary for the Trustees to meet, he or she shall convene a meeting by written notice to the other Trustees.
- 8.3.3 The notice shall specify the business to be dealt with at the meeting and, if possible, shall be accompanied by draft minutes of the previous meeting.

8.3.4 The date of the first annual meeting shall be determined by way of agreement between the Trustees once all of them have been appointed pursuant to clause 7.1.2. Thereafter, the date of subsequent annual meetings shall be determined within 30 days after the preceding annual meeting. Meetings called in accordance with clause 8.3.1.2 shall be announced with 40 days notice at least. In fixing the date of annual meetings and other meetings of the Trustees, due consideration shall be given to the availability of Trustees who may be resident abroad.

8.4 Quorum at Meetings of Trustees

8.4.1 Within the first six months after the registration of the KRT, the quorum at any meeting of the Trustees shall be all three Trustees present, whereafter the quorum at any meeting of the Trustees shall be at least two Trustees present.

8.4.2 If within 60 minutes after the time appointed for any meeting of the Trustees a quorum is not present, the meeting shall stand adjourned to a day not less than five days and not more than ten days after the date of the adjourned meeting. If at such continued meeting a quorum of the Trustees is not present within 60 minutes after the time appointed for such meeting, the Trustee or Trustees present at such meeting shall constitute a quorum. The place and time for such continued meeting shall be determined at the adjourned meeting prior to its adjournment and notice of such continued meeting shall be given to all the Trustees not present at the adjourned meeting. The business which shall be conducted at the continued meeting shall be restricted to that which was to have been conducted at the adjourned meeting.

8.5 Voting at Meetings of Trustees

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

8.5.2 In the event of a deadlock between the only two Trustees present at a meeting (in circumstances where such deadlock is not resolved by the exercise of the Chairperson's casting vote), the matter in respect of which the deadlock has arisen shall be referred to a meeting at which all the Trustees are present.

8.6 Minutes and Attendance Register

- 8.6.1 Each Trustee shall sign the attendance register maintained in relation to the KRT in respect of every meeting of the Trustees which he or she attends.
- 8.6.2 The Trustees shall keep a minute of every meeting of the Trustees. A draft minute shall be prepared and presented to the next meeting of the Trustees for approval. A copy of any minute, signed by the Chairperson or by any two of the Trustees present at such meeting, shall, until the contrary is proved, constitute evidence of the content of the minute.

8.7 Round Robin Resolutions

A written resolution unanimously supported and signed by all the Trustees shall be of full force and effect and shall have the same status as a decision taken at a meeting of the Trustees.

8.8 Accounts and Reports

- 8.8.1 The Trustees shall keep full and proper records relating to the affairs of the KRT (including the administration of the Trust Funds).
- 8.8.2 The Trustees shall, within 9 months after the end of the Financial Year, prepare and make available to Mr Spoor audited annual financial statements in accordance with the laws of South Africa and shall further at his request furnish him with copies of such further documents and information as may reasonably be required by him.
- 8.8.3 The Trustees shall, within 90 days after the end of each Financial Year, prepare a written report, certified by the Trustees, indicating the Reasonable Administration Costs incurred by the KRT in relation to the preceding Financial Year and furnish this to Mr Spoor and shall further at his request furnish him with copies of such further documents and information as may reasonably be required by him.
- 8.8.4 The Trustees shall, within 90 days after the end of each Financial Year, prepare a written report, certified by the Trustees, indicating the number of

Applications which have been considered by the KRT and, the number and value of Grants which have been paid by the KRT during the preceding Financial Year and furnish this to Mr Spoor and shall further at his request furnish him with copies of such further documents and information as may reasonably be required by him.

9. Powers of Trustees

- 9.1 Subject to the provisions of this Deed, the Trustees shall have all powers consistent with the laws of South Africa necessary for and/or reasonably ancillary to the achievement of the primary object set out in clause 4 above.
- 9.2 In particular, the Trustees shall have the powers:
- 9.2.1 to advertise the existence of the KRT and to invite Applications;
 - 9.2.2 to receive and consider Applications;
 - 9.2.3 to pay Grants;
 - 9.2.4 to determine what, if any, fees and costs shall be paid or reimbursed to third parties who provide legal or other assistance to Applicants to prepare and lodge their Applications, either in general or in respect of different third parties;
 - 9.2.5 to receive and accept donations, bequests, grants, settlements and/or awards on such terms and conditions as may be agreed or determined;
 - 9.2.6 to consult with, take advice from, nominate, appoint and/or contract with experts in any relevant field so as to assist the Trustees in the exercise of their powers and/or in the discharge of their duties;
 - 9.2.7 to nominate, appoint and/or contract with the Asbestos Relief Trust and/or any other person for the rendering of management and/or administrative services;

- 9.2.8 to contract or agree with the Asbestos Relief Trust and/or any other party, as is appropriate, regarding the manner in which the costs of any awards will be apportioned or allocated between them where they have shared or overlapping responsibility in terms of their respective Trust Deeds and/or statutes;
- 9.2.9 to invest assets of the KRT from time to time, including acquiring movable and immovable property, acquiring corporeal and incorporeal things, holding shares in a private or public company, investing in Government bonds or other securities, depositing funds in a bank or other financial institution;
- 9.2.10 to convert, vary, realise and/or reinvest any such assets;
- 9.2.11 jointly to exercise any voting or similar rights attaching to any securities held by the KRT from time to time;
- 9.2.12 to grant mortgages, pledges and/or security cessions;
- 9.2.13 to arrange for the issue of bank guarantees;
- 9.2.14 to be paid their reasonable fees and to be reimbursed their reasonable expenses in respect of acting as Trustees;
- 9.2.15 to use funds which have been raised, allocated and/or acquired for this specific purpose to undertake or commission special projects, investigations or programmes that will be of direct benefit or advantage to the communities affected by the asbestos mining and milling activities of the Asbestos Investment Group. The Trustees may in their discretion allocate interest accrued on the Trust Funds for such purpose, but not the capital amounts allocated for the payment of Grants or costs.

10. Possession and Ownership of Assets of KRT

- 10.1 All assets acquired and all liabilities incurred by the Trustees in their capacity as such shall vest in the Trustees in such capacity and shall be

administered by them separately from their own affairs as part of the Trust Funds.

- 10.2 The assets of the KRT shall be registered in the name of the KRT, the Trustees or a nominee of the KRT.
- 10.3 The Trustees shall take into their possession and retain in their care and custody or that of their agents all and any instruments of title and other documents relating to or in respect of the KRT and its activities.
- 10.4 Save in respect of the payment of Grants the Beneficiaries shall have no rights in, to and/or against any assets and/or income of the KRT.

11. Duration and Dissolution of the KRT

- 11.1 Subject to clause 11.3 below, the KRT shall endure for a period of 20 years from the date of its registration by the Master of the High Court, provided that the Trustees, having regard to the primary object set out in clause 4 above and the interests of initial Beneficiaries and any residual Beneficiaries, may reduce or extend the life of the KRT by a period of 5 years.
- 11.2 To the extent that, upon the expiry of the life of the KRT or its dissolution for any reason, the KRT has any remaining assets and/or income, the residual Beneficiaries of the assets and income of the Trust shall be any charitable organisation having as one of its principal objects the promotion of the welfare of persons or communities detrimentally affected by asbestos mining and/or milling in the geographic area in which the Asbestos Investment Group operated.
- 11.3 If the Trustees are notified in writing by Mr Spoor that no further Trust Funds will be made available to the KRT, the Trustees shall take immediate steps to dissolve the KRT.

12. Payment of Grants

12.1 Use of Trust Funds

- 12.1.1 The Trust Funds shall be used by the Trustees to pay Grants to the following categories of Beneficiaries:
- 12.1.2 all and any persons who have submitted to the KRT successful Occupational Applications (“**Occupational Applicants**”);
- 12.1.3 all and any persons who have submitted to the KRT successful Environmental Applications (“**Environmental Applicants**”); and
- 12.1.4 all and any persons who have submitted to the KRT successful Dependant

Applications (“**Dependant Applicants**”).

12.1.5 In circumstances where an Occupational or Environmental Applicant dies after submitting an Application but before receiving payment of a Grant, any Grant awarded by the Trustees shall be paid to his or her estate or, on receipt of an appropriate indemnity and at the discretion of the Trustees, directly to that person’s dependant or dependants. In either circumstance, no Dependant Application shall be admitted.

12.2 Dependant Applicants

12.2.1 Dependant Applications may be submitted to the KRT provided that such applications are submitted within three years of the death of the person concerned.

12.2.2 No Dependant Application shall be accepted by the Trustees or any Grant paid by the KRT in circumstances where a deceased person was previously awarded a grant in respect of his or her having contracted mesothelioma and/or asbestos-related lung cancer.

12.2.3 Only one Dependants Application may be submitted on behalf of a deceased person’s dependants and any Grant paid by the KRT shall be in respect of all that person’s dependants.

12.2.4 A Dependant Applicant shall be required to warrant that he or she is acting in a representative capacity on behalf of all the deceased person’s dependants whether or not all such dependants are disclosed in the Application.

12.2.5 Before making payment of any Grant to any Dependant Applicant, the Trustees shall procure from the Dependant Applicant an appropriate indemnity indemnifying the KRT, the Trustees and the Becon Group against all and any claims which may be brought by any other dependant of the deceased person. This indemnity shall substantially be in form of Annex "A" hereto.

12.3 Proof of Exposure

- 12.3.1 The Trustees shall in all instances satisfy themselves that an Applicant (or the deceased in the case of a Dependant Application) experienced Significant Exposure at or near a Qualifying Operation during the Qualifying Period.
- 12.3.2 The Trustees shall require of Occupational Applicants that they furnish documentary proof of their employment at a Qualifying Operation during the Qualifying Period. Such proof shall include but not be limited to extracts from any official government records including the records of the MBOD or CCOD and/or any records of his or her erstwhile employer. In appropriate circumstances the Trustees may place reliance on the sworn testimony of witnesses who have been questioned regarding these matters by a person nominated for this purpose by the Trustees.
- 12.3.3 The Trustees shall require of Environmental Applicants that they furnish proof of residence at or near a Qualifying Operation as well as the period of such residence. Such Applicants shall be free to submit such further evidence as they wish to demonstrate that they experienced Significant Exposure at such place and during such time.
- 12.3.4 The provisions of clauses 12.3.1 to 12.3.3 above shall apply *mutatis mutandis* to Dependant Applications.
- 12.3.5 The Trustees shall be required to satisfy themselves as to the veracity of the evidence, documentary or otherwise, presented to them in support of any Application. The Trustees may however have regard to records, reports, scientific research and/or expert opinion to which they have access, which is in their possession or which has been commissioned or obtained by them in order to satisfy themselves whether or not an Application should succeed.
- 12.3.6 At all times the onus of proving that the relevant person experienced Significant Exposure at the relevant place and during the relevant period shall be borne by the Applicant.
- 12.3.7 In the case of any Application based on the contraction of mesothelioma or

asbestos-related lung cancer, no account shall be taken of any exposure to asbestos dust and/or fibre in the 10 (ten) years prior to the diagnosis of the ARD.

12.4 Proof of Disease

12.4.1 An Applicant shall be required to satisfy the Trustees that he or she has contracted an ARD or, in the case of a Dependant Application, that the deceased has died and that a cause of his or her death was mesothelioma or asbestos-related lung cancer.

12.4.2 As a general rule in relation to asbestosis and pleural thickening the Trustees will require such information as they deem necessary to confirm a diagnosis of such ARDs which shall ordinarily include:

12.4.2.1 a good quality postero-anterior x-ray film of the Applicant's lungs and/or a report of the results of the x-ray graded and classified according to the standard long form ILO classification system, such report having been completed and signed by a qualified radiologist;

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

12.4.2.3 the results or the records of a clinical examination; and

12.4.2.4 a history of the exposure to asbestos dust and/or fibre.

12.4.3 Such medical evidence shall be submitted to and considered by a Trust Doctor for the purpose of diagnosis or confirmation of diagnosis and the degree of lung function impairment attributable to the ARD. The decision of such doctor or doctors on medical issues shall be binding on the Trustees.

12.4.4 In circumstances where a definitive diagnosis is not capable of being made or confirmed on the basis of the information submitted by the Applicant, the Trustees may require him or her to undergo such further examinations as they

deem appropriate to assist the Trust Doctor to make or confirm a diagnosis.

12.4.5 As a general rule in relation to mesothelioma and asbestos-related lung cancer the Trustees will require such information as they deem necessary to confirm a firm diagnosis of such ARDs which shall ordinarily include:

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

12.4.5.2 a pathological report prepared pursuant to a cytological examination of a pathological sample, for example, of pleura or lung tissue or fluid or a biopsy;

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

12.4.5.4 a history of the exposure to asbestos dust and/or fibre.

12.4.6 Such medical evidence shall be submitted to and considered by a Trust Doctor for the purpose of diagnosis or confirmation of diagnosis and the degree of lung function impairment attributable to the ARD. The decision of such doctor or doctors on medical issues shall be binding on the Trustees.

13. Terms of Grants

The following principles shall apply to any Grant:

13.1 A Beneficiary who has been paid a Grant for asbestosis or pleural thickening and who is subsequently diagnosed with mesothelioma or asbestos-related lung cancer may apply for the higher level of Grants applicable to mesothelioma or asbestos-related lung cancer (as the case may be) and, if all of the relevant criteria are met, will be entitled to be paid the difference between the Grant previously awarded and the higher Grant payable in respect of such ARDs.

- 13.2 A Dependant Application brought after the death of a Beneficiary who was paid a Grant for asbestosis or pleural thickening but who subsequently died of mesothelioma or asbestos-related lung cancer shall similarly be competent and the Applicant shall be entitled to be paid the difference between the Grant previously awarded and the higher Grant payable in respect of such ARDs.
- 13.3 Save as provided in clauses 13.1 and 13.2 above, all Grants shall be once-off lump sum payments, and no Applicant shall be entitled to receive more than one Grant.
- 13.4 All Grants paid by the KRT for general damages shall be based on lung function impairment. In the case of mesothelioma and asbestos-related lung cancer, the lung function impairment shall be deemed to be 100%. In the case of asbestosis and pleural thickening, two categories of lung function impairment shall be recognised: a condition which results in lung function impairment of between 10% and 39% and a condition which results in lung function impairment of 40% or greater.
- 13.5 Notwithstanding the provisions of clause 13.3 above, an Applicant suffering from mesothelioma or asbestos-related lung cancer who the Trustees are reasonably satisfied will qualify for the payment of a Grant shall be entitled to apply for an interim Grant in such amount, on such terms and subject to such criteria as may be determined by the Trustees. A Beneficiary who has been paid such an interim Grant shall be paid a supplementary Grant if all of the relevant criteria are met, amounting to the difference between that to which he or she would ordinarily be entitled and the interim Grant previously paid.

14. Amounts of Grants

- 14.1 Subject to the overriding principle embodied in the primary object set out in clause 4 above, the Trustees shall, in order to achieve equity as between Beneficiaries, cost effectiveness and efficiency in the administration of the KRT, be afforded a broad discretion, within the parameters of expert advice received by them, to make standard Grants inclusive of general and special

damages, provided that Grants for special damages shall be paid only in respect of medical expenses and/or loss of earnings or support.

- 14.2 In exercising their discretion as to the amounts of grants, the Trustees shall be bound by the Schedule of Grant amounts referred to in clause 4 above.
- 14.3 The Trustees may deviate from the Schedule of Grant amounts referred to in clause 4 above only in exceptional circumstances where paying according to the schedule would give rise to inequity and undue hardship. The Trustees' discretion in this regard shall be final.
- 14.4 The amounts of Grants will be adjusted from time to time on the basis of expert advice obtained by Mr Spoor, so as to maintain the real value of Grants. The cost of such expert advice shall be deemed part of the Reasonable Administration Costs of the Trust. The adjusted Schedule of Grant amounts will be furnished to the Trustees by Mr Spoor.
- 14.5 Any adjustment in the amounts of Grants shall not be retrospective in effect and any Beneficiary who receives a Grant prior to any such adjustment shall not be entitled to benefit from any increase in the amounts of Grants. Conversely no Beneficiary shall be obliged to repay any amount to the Trust in the event that the amounts of Grants are adjusted downwards.

15. Deductions from, Apportionments of and Adjustments to Grants

- 15.1 The Trustee must deduct from any Grant any amount received by or due to the Beneficiary or, in the case of Dependant Applications, any amount received by or due to the deceased's estate or dependants, in respect of any ARD, in the form of any award or grant made by a court of law, the Asbestos Relief Trust, the CCOD, the Workman's Compensation Commissioner or any other private or public scheme established to compensate victims of ARD. For the purpose of interpreting this clause, the intention is to limit the victim's compensation to actual loss or harm suffered by that person and to avoid double compensation.
- 15.2 The Trustees shall endeavour to enter into an agreement with the Asbestos

Relief Trust and/or other third parties regarding the manner in which the costs of any awards will be apportioned or allocated on an equitable basis between them where they have shared or overlapping responsibility in terms of their respective Trust Deeds and/or statutes, and will implement such agreement.

- 15.3 The Trustees shall reduce by an appropriate and equitable proportion, as determined by the Trustees in general or on a case-by-case basis, the amount of any Grant payable to a Beneficiary in relation to asbestosis and/or pleural thickening, having regard *inter alia* to
- 15.3.1 the contribution made by any exposure to asbestos dust and/or fibre other than at or near a Qualifying Operation,
- 15.3.2 the contribution made by any exposure to asbestos dust and/or fibre during a period outside the Qualifying Period, as well as
- 15.3.3 the contribution made by non-asbestos related factors, such as smoking and tuberculosis,

to his or her condition and/or lung-function impairment.

- 15.4 The Trustees shall reduce by an appropriate and equitable proportion, as determined by the Trustees in general or on a case-by-case basis, the amount of any Grant payable to a Beneficiary in relation to asbestos-related lung cancer having regard to the contribution made by smoking.

16. Medical Screening

The Trust may out of the moneys budgeted and set aside by the Trustees for the payment of the Trust's Reasonable Administration Costs, pay the reasonable medical cost of screening ex-employees of KCB and DCBA to establish whether or not such person is suffering from an ARD, provided that the Trust may stipulate the medical procedures and practitioners who will carry out such screening and further that this screening shall not be done at the Trust's expense more than once for the same employee.

17. Miscellaneous Matters

17.1 Amendment of Deed

Subject to the consent of the Master and to the consent of Becon and of Mr Spoor, this Deed may be amended by the Trustees.

17.2 Severability of Provisions

17.2.1 Each clause in this Deed is severable from every other clause.

17.2.2 If any provision of this Deed is found by a competent Court to be unenforceable, the remaining provisions shall be of full force and effect.

17.3 Execution in Counterparts

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

17.4 Assignment and Transfer of Deed

17.4.1 Save as provided for in this Deed, no party may cede, assign or transfer any rights or delegate any obligations without the prior written consent of the other party.

17.4.2 In the event that Becon or NNS ceases to exist as a legal entity or transfer all or the major part of its business to another, all its rights and/or obligations under this Deed shall automatically be transferred to its legal successor.

17.4.3 In the event that Mr Spoor becomes incapable of exercising his rights and/or obligations under this Deed, the Auditors shall nominate an appropriate person as his replacement which nomination shall not unreasonably be rejected by Becon.

17.5 Warranty and guarantee by Mr Spoor

Mr Spoor undertakes to ensure that all undertakings by him set out in this Deed shall be observed not only by himself but also by NNS and all its directors, employees and representatives.

18. Legal Standing

Mr Spoor shall enjoy the *locus standi* to bring legal proceedings against the Trust and the trustees or any one of them to compel the due and proper performance by them of their responsibilities in terms of this deed and, provided that he exercises this power in good faith, no order of costs, arising from such proceedings, shall be sought or be enforced against him by the Trust or any Trustee acting in his/her capacity as such.

19. Applicable Law

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

Signed and dated this day of 2006, at
.....

For Becon AG:
who warrants his authority thereto

Witness:

Signed and dated this day of 2006, at Johannesburg

For first Trustee:

who warrants his authority thereto

Witness:

Annex

A: Specimen Undertaking of Release and Discharge