

Companies and Intellectual Property Commission

Republic of South Africa

Memorandum of Incorporation

of

Bauba Resources Proprietary Limited

(Registration Number _____)

[Previously Bauba Resources Limited (Registration Number 1986/004649/06)]

which is a private company,

referred to in the rest of this MOI as "the Company"

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Part I - Interpretation and preliminary, continuing obligations incorporation and nature of the Company

1. Interpretation

The headings of the articles in this MOI are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this MOI nor any article hereof or paragraph of any schedule hereto. Unless a contrary intention clearly appears:

1.1 words importing:

1.1.1 any one gender includes the other two genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*.

1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 **"Board"** means the board of Directors of the Company, from time to time;

1.2.2 **"Business"** means the business of the Company as contemplated in article 2.6;

1.2.3 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.2.4 **"Companies Act"** means the Companies Act, 71 of 2008, as amended;

1.2.5 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;

- 1.2.6 **"Competition Authorities"** means the competition commission established pursuant to Chapter 4, Part A of the Competition Act or the competition tribunal established pursuant to Chapter 4, Part B of the Competition Act or the competition appeal court established pursuant to Chapter 4, Part C of the Competition Act, as the case may be;
- 1.2.7 **"Debt Instruments"** bears the meaning as defined in section 43(1)(a) of the Companies Act;
- 1.2.8 **"Director"** means a director of the Company, and where the context so provides, an alternate director appointed in respect of such director;
- 1.2.9 **"Fair Market Value"** means, in relation to any Ordinary Shareholder's Shares, and in circumstances where such Shares are either to be sold to other Ordinary Shareholders or a Shareholder's Shareholding diluted pursuant to the provisions of this MOI, the fair market value as agreed between the selling/diluting Shareholder and the acquiring Shareholders, or failing such agreement within 10 (ten) Business Days from the date of request by any such Shareholder for such agreement, the fair market value determined by an suitably qualified independent person of at least 10 (ten) years' experience in fair market valuations of mining companies to be agreed between the Ordinary

Shareholders within 10 (ten) Business Days) the date of request by any such Ordinary Shareholder. Should the Ordinary Shareholders not agree as aforesaid, any Ordinary Shareholder shall be entitled to approach the chairperson of the South African Institute of Chartered Accounts, to nominate an independent person. Such person whether agreed or appointed shall be referred to, for purposes of this article as **"the Expert"** shall act as an expert and not as an arbitrator and whose decision (except for manifest error) shall be final and binding on the Ordinary Shareholders and may be made an order of court;

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|--------|-------------------------------|--|
| 1.2.10 | "this MOI" | means this memorandum of incorporation of the Company and any schedules hereto, as amended from time to time; |
| 1.2.11 | "Options" | means options for the issue or subscription of Shares, Securities or Debt Instruments, as the case may be; |
| 1.2.12 | "Ordinary Resolution" | means a resolution adopted with the support of more than 50% (fifty percent) of the voting rights of Shareholders exercised on the resolution; |
| 1.2.13 | "Ordinary Shareholder" | means a person reflected, from time to time, in the Securities Register as holding Ordinary Shares; |

1.2.14	"Ordinary Shares"	means the ordinary shares of no par value in the authorised capital of the Company which have been designated as such;
1.2.15	"the Parties"	means the Company and each Securities Holder or any one or more of them, as the context may require;
1.2.16	"Pelagic"	means Pelagic Resources PTE Limited, (Registration Number 201713062N), a limited liability private company duly incorporated and registered in accordance with the laws of the Republic of Singapore;
1.2.17	"Prime Rate"	means the publicly quoted prime rate of interest (expressed as a nominal annual compounded monthly in arrears rate) charged by Nedbank Limited from time to time, calculated on a 365 (three hundred and sixty five) day year, irrespective of whether the applicable year is a leap year, and proved, <i>prima facie</i> , in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any senior manager of that bank (whose appointment, authority and qualification need not be proved);
1.2.18	"Raubex"	means Raubex Proprietary Limited, (Registration Number 1978/004596/07), a private company duly incorporated and registered in accordance with the laws of the Republic of South Africa;

1.2.19	"Regulations"	means the regulations promulgated from time to time under the Companies Act;
1.2.20	"Regulatory Authority"	means any governmental, quasi-governmental body or agency lawfully exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory, licensing, competition, tax, importing or other governmental authority or quasi-governmental authority within the Republic of South Africa, including without limitation, the Competition Authorities;
1.2.21	"Securities"	shall bear the meaning as defined in the Companies Act, from time to time, and shall include, without limitation, the Ordinary Shares and unless the context indicates differently, Debt Instruments;
1.2.22	"Securities Holder"	means the registered holder of any Securities in the Company, including without limitation an Ordinary Shareholder;
1.2.23	"Securities Register"	means the register of Securities established or maintained by the Company in terms of section 50(1) of the Companies Act;
1.2.24	"Shareholder Loans"	means all amounts of whatsoever nature and however arising owing by the Company to an Ordinary Shareholder;

- 1.2.25 **"Shareholders"** means the registered holders of Shares in the Company, from time to time;
- 1.2.26 **"Shares"** means any shares in the authorised capital of the Company of whatever designation and with whatever rights, privileges and limitations, as set out in this MOI;
- 1.2.27 **"Special Resolution"** means a resolution adopted with the support of at least 75% (seventy five percent) of the voting rights of Shareholders exercised on the resolution;
- 1.2.28 **"Specially Protected Matters"** means each matter set out in Annexure 1;
- 1.2.29 **"Subsidiary"** has the meaning ascribed to it in section 3 of the Companies Act;
- 1.3 a reference to a section by number refers to the corresponding section of the Companies Act;
- 1.4 where any term is defined within the context of any particular article in this MOI, the term so defined, unless it is clear from the article in question that the term so defined has limited application to the relevant article, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation article;
- 1.5 when any number of days is prescribed in this MOI, 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 which case the last day shall be the next Business Day;

- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7 the expiration or termination of this MOI shall not affect such of the provisions of this MOI as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the articles themselves do not expressly provide for this;
- 1.8 any reference in this MOI to the Company or any one or more Securities Holders, as the case may be, shall if the Company or any one or more Securities Holders, as the case may be, is put under business rescue, liquidated or sequestrated, be applicable also to and binding upon the Company's or the relevant Securities Holders', as the case may be, business rescue practitioner, liquidator or trustee, as the case may be; and
- 1.9 any reference to a statute shall be a reference to such statute as at the date of the adoption of this MOI by the Company and as amended from time to time thereafter.

2. Incorporation and nature of the Company

2.1 Incorporation

The Company is a pre-existing company, which was incorporated as a public company under the Companies Act, 1973 and has been converted to a private company. This MOI replaces and supersedes the memorandum of incorporation applicable immediately prior to the filing hereof.

The Company continues to exist in terms of section 19(1)(c) of the Companies Act in accordance with and governed by:

- 2.1.1 the unalterable provisions of the Companies Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii) of the Companies Act);

2.1.2 the alterable provisions of the Companies Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with 15(2)(a)(ii) of the Companies Act); and

2.1.3 the provisions of this MOI (subject to and in accordance with section 15(2) of the Companies Act);

2.2 **Private company provisions**

2.2.1 The Company is a private company, and accordingly:

2.2.1.1 the transferability of the Securities of the Company is restricted as provided in this MOI; and

2.2.1.2 any offer to the public of any Securities of the Company is prohibited.

2.3 **Application of Optional provisions of the Act**

2.3.1 Save as specifically set out herein, the Company does not elect, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in Chapter 3 of the Act.

2.3.2 The Company, being a private company, does not elect in terms of section 118(1)(c)(ii) to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act and to the Takeover Regulations provided for in the Act.

2.4 **Powers of the Company and restrictive conditions**

2.4.1 Subject to the provisions of this MOI and Annexure 1, the Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this MOI should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

2.4.2 Except to the extent that this MOI and Annexure 1 provide otherwise, the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in sections 15(2)(b) or (c) and 19(1)(b)(ii).

2.4.3 If (i) the Company is a Subsidiary of any Shareholder; and (ii) any direct or indirect holding company of such Shareholder is listed on the securities exchange operated by the JSE Limited (with registration number 2005/022939/06 and being licensed as an exchange under the Financial Markets Act, 19 of 2022) (the "**JSE**"), nothing contained in this MOI shall frustrate such Shareholder or its holding company in any way from compliance with its obligations in terms of the JSE Listings Requirements (as amended from time to time) and nothing contained in this MOI shall relieve such Shareholder or its holding company from compliance with the JSE Listings Requirements.

2.5 **Audit**

The financial statements of Company shall be audited.

2.6 **Business of the Company**

The business of the Company is prospecting and conducting mining operations and all ancillary business relating or incidental thereto.

Part II - Securities, Securities Register, certificates, restrictions on the powers of the Board as regards Securities, pre-emptive rights and transfers

3. **Securities**

3.1 **Classes and numbers of Securities**

The Company's authorised Securities comprise 2 750 000 000 (two billion seven hundred and fifty million) shares designated as Ordinary Shares, which Ordinary Shares may only be increased, decreased or issued subject to compliance with this MOI, including without limitation article 3.5.2.

3.2 Rights attaching to the Ordinary Shares

3.2.1 The following rights are applicable to the Ordinary Shares in the Company:

3.2.1.1 all the Ordinary Shares of the Company shall rank *pari passu* in all respects;

3.2.1.2 all Ordinary Shares shall have the right to:

3.2.1.2.1 be entered in the Securities Register of the Company as the registered holder of an Ordinary Share;

3.2.1.2.2 attend, participate in, speak at and vote on any matter to be considered at, any meeting of Ordinary Shareholders; and

3.2.1.2.3 subject to article 18, receive any distribution by the Company, if and when declared on the Ordinary Shares, to be made in proportion to the number of Ordinary Shares held by each Ordinary Shareholder;

3.2.1.3 if the Company is to be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be distributed among the Ordinary Shareholders in proportion to the number of Ordinary Shares held by each of them, provided that the provisions of this article shall be subject to the rights of the holders of Securities, issued upon special conditions;

3.2.1.4 in a winding-up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a special resolution of the Company, be paid to the Ordinary Shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such Ordinary Shareholders, and the liquidation of the Company may be closed and the Company dissolved; and

3.2.1.5 any other rights attaching to the Ordinary Share in terms of the Companies Act or any other law.

3.3 **Securities Register**

3.3.1 Any person who is entitled to have his/her/its name entered into the Securities Register of the Company shall provide to the Company all the information it may require from time to time for purposes of establishing and maintaining the Securities Register, including the name, business address, residential address, postal address and available e-mail address (or other electronic address or communication details) of that person.

3.3.2 Any person contemplated in article 3.3.1, may by written notice to the Company change the business address, residential address, postal address and available e-mail address (or other electronic address or communication details) of that person, provided that the change shall become effective *vis-à-vis* that person on the 10th (tenth) Business Day from the receipt of the notice by the Company.

3.3.3 In the case of any Security registered in the names of 2 (two) or more persons as joint holders, the person first-named in the Securities Register shall, save as is provided in this MOI, be the only person recognised by the Company as having any title to such Security and to the related certificate of title, subject to the provisions of the Companies Act.

3.3.4 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any Security, the sole remaining holder or the first-named of 2 (two) or more remaining joint holders, as the case may be, shall be the only person recognised by the Company as having any title to such Security, subject to the provisions of the Companies Act.

3.4 **Certificated Securities**

3.4.1 Every person to whom Securities are issued and whose name is entered in the Securities Register shall be entitled to 1 (one) certificate for all the Securities in any class registered in his name, or to several certificates, each for a part of such Securities.

3.4.2 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "**Duplicate Certificate**" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.

3.4.3 A certificate registered in the names of 2 (two) or more persons shall be delivered to the person first-named in the Securities Register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that Security.

3.5 **Pre-emptive right to be offered and to subscribe for additional Shares**

3.5.1 **Alteration of the alterable provisions in section 39 of the Companies Act**

The pre-emptive right of the Shareholders to be offered and to subscribe for additional Shares (additional to the Shares in issue from time to time), as set out in section 39(2) of the Companies Act read with sections 39(3) and 39(4) of the Companies Act does not apply, instead article 3.5.2 shall apply.

3.5.2 **Shareholders' rights of pre-emption on issue**

3.5.2.1 **Fresh issue of an existing class of issued Shares**

3.5.2.1.1 If the Company proposes to issue additional Shares (additional to the Shares in issue from time to time) then the Company must first offer in writing ("**the Offer**") to each Shareholder in the same class as the proposed issue the right to subscribe, within 30 (thirty) Business Days of the date of the Offer, for that number of the Shares of the

proposed issue as each Shareholder's shareholding in that class bears to the Company's issued Shares of that class, both calculated as at the date of the Offer.

3.5.2.1.2 The written Offer to each Shareholder must stipulate at least the date of the Offer, the subscription price per Share, the number and class of Shares for which the Shareholder is entitled to subscribe, the total number of Shares proposed to be issued, the date by which acceptances must be received and on which the subscription price is payable, the details of the Company's bank account into which the subscription price is to be paid, as well as a copy of the provisions of this MOI which relate to the Offer.

3.5.2.2 **Delivery of offer and acceptance period**

The Offer shall be delivered to each Shareholder in the same class as the proposed issue, and is irrevocable and open for acceptance by delivering notice of acceptance in writing to the Company ("**Notice Of Acceptance**") which must in order to constitute valid acceptance:

3.5.2.2.1 specify whether the Shareholder is accepting the number of Shares offered or less than that number; or wishes to subscribe for more than that number; and

3.5.2.2.2 be received by the Company within 30 (thirty) Business Days of the date of the Offer ("**Acceptance Period**").

3.5.2.3 **Allocation of excess Shares not subscribed for**

The Board shall within 10 (ten) Business Days of the date of the close of the Acceptance Period:

3.5.2.3.1 offer the Shares not subscribed for ("**Excess Shares**") to the Shareholders who offered to subscribe for the Excess Shares in a Notice of Acceptance *pro rata* in the

proportions that each of their Shareholdings in the class offered bears to the aggregate number of Shares of the class offered held by the Shareholders who offered to subscribe for Excess Shares set out in article 3.5.2.2.1; and

3.5.2.3.2 the offer in article 3.5.2.3.1 shall be delivered to each of the Shareholders who offered to subscribe for the Excess Shares and is irrevocable and open for acceptance by giving Notice of Acceptance in writing to the Company ("**the Second Notice of Acceptance**") which must in order to constitute valid acceptance:

3.5.2.3.2.1 specify whether the Shareholder is accepting the number of Shares offered or less than that number; and

3.5.2.3.2.2 be received by the Company within 7 (seven) Business Days of the date of the offer in article 3.5.2.3.1.

3.5.2.4 **Payment for Shares and Excess Shares subscribed for**

Payment of the subscription price for the number of Shares recorded in a Notice of Acceptance and the Second Notice of Acceptance must be made within 30 (thirty) Business Days of Notice of Acceptance or the Second Notice of Acceptance as the case may be and failing payment the Board will be entitled (but not obliged) to offer the Shares and Excess Shares for which a Shareholder had submitted a Notice of Acceptance and the Second Notice of Acceptance to any persons approved in accordance with article 3.5.2.5.1.

3.5.2.5 **Offer of remaining Shares to approved persons**

3.5.2.5.1 If all the Shares which are the subject matter of the Offer are not subscribed for or if the Board exercises its rights

under article 3.5.2.4 ("**Remaining Shares**") and if the Ordinary Shareholders have, by ordinary resolution approved any person or persons ("**Approved Persons**") to whom the Remaining Shares may be offered, the Board shall then offer these Remaining Shares to the Approved Persons.

3.5.2.5.2 The offer to the Approved Persons must be made within the 15 (fifteen) Business Days immediately following the due date for payment of the subscription price set out in article 3.5.2.4 at the same issue price per Share and on terms and conditions otherwise not more favourable than those as provided for in terms of the Offer except that:

3.5.2.5.2.1 the acceptance period may be extended at the discretion of the Board by no more than 90 (ninety) days or such longer period (not exceeding an additional 90 (ninety) days) as the Board may allow if any of the Approved Persons requires an extension to obtain any regulatory approvals;

3.5.2.5.2.2 payment of the subscription price must be made within 7 (seven) Business Days of delivery of the Notice of Acceptance or obtaining the required regulatory approvals, whichever is the later; and

3.5.2.5.2.3 warranties and indemnities as shall be normal for a transaction of this nature may be provided to the Approved Persons.

3.5.2.6 **Pre-emption provisions to apply again**

If after the relevant Shares have been offered in accordance with article 3.5.2.5.1 there are Shares which have not been subscribed for, then such Shares shall not be issued except after again following the pre-emption provisions of this article 3.5.2.

3.5.2.7 **Shareholders with insufficient funds to subscribe for Shares**

If any Shareholder does not have the finances to subscribe for Shares pursuant to the Offer, the undertaking of the issue of Shares pursuant to the Offer and the price at which it is undertaken shall not constitute unfairly prejudicial, unjust or inequitable conduct.

3.6 **Pre-emptive right to be offered and to subscribe for additional Securities**

The provisions of articles 3.5.1 and 3.5.2 shall apply *mutatis mutandis* to any other additional Securities (additional to the Securities in issue from time to time) to be issued by the Company, from time to time.

4. **Restrictions on transferability of Securities**

4.1 **Proper instrument of transfer**

For purposes of section 51(6)(a) of the Companies Act, a "*proper instrument of transfer*" means an instrument in writing, in any form, specifying: (a) the full name of the transferor (being the name of a person entered in the Securities Register as the registered holder of the Securities being transferred); (b) the full name of the transferee; (c) the number of the class of Shares or type of Securities being transferred; and (d) the registered address of the transferee, which shall include a business address, residential address, postal address and email address, if available; which has been signed by or on behalf of the registered Securities Holder as transferor and signed by or on behalf of the transferee.

4.2 **The Board's power to decline to register a transfer**

The Board may not decline to register the transfer of any Securities in terms of a proper instrument of transfer unless (and for so long as) the transfer in question is not in accordance with the requirements for such transfer, if any, set out in this MOI. The transferor shall be deemed to remain the holder of and shall remain the registered holder in respect of such Securities until the

name of the transferee is entered in the Securities Register in respect thereof.

4.3 Documents required for registration of transfer

4.3.1 Any person wishing the Company to register the transfer of any Securities shall deliver to the Company:

4.3.1.1 a copy of a proper instrument of transfer as contemplated in article 4.1, certified as a true copy of the original; and

4.3.1.2 the original certificate issued by the Company as regards the relevant Securities (or a Duplicate Certificate issued pursuant to article 3.4.2) of the Securities being transferred or, in the absence of such original or Duplicate Certificate, such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Securities.

4.3.2 Where an instrument of transfer is signed by a person other than the relevant Securities Holder, a copy of the authority granted by the Securities Holder for the purpose of transferring Securities, certified as a true copy of the original authority, shall be lodged, produced or exhibited with or to the Company if the Company so requests.

4.3.3 Such authorities shall, as between the Company and the grantor of such authorities be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the Securities Holder as transferor pursuant to such authority to be acted upon, until express written notice of its revocation signed by or on behalf of the Securities Holder is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer signed under the authority to sign and certified by any officer of the Company as being in order before the lodging of such written notice of revocation.

4.3.4 The copy of the instrument of transfer, original or Duplicate Certificate, other documentary evidence and a copy of any authority to transfer the Securities shall remain in the custody of the Company at its registered office.

4.4 **Recognition of title**

The parent or guardian of a Securities Holder who is a minor, the executor or administrator of a Securities Holder who is deceased, the trustee of a Securities Holder who is an insolvent or the *curator bonis* of any registered Securities Holder who is mentally incapacitated or prodigal or any person duly appointed by competent authority to represent or act for any registered Securities Holder shall, subject to the provisions of articles 3.3.3 and 3.3.4 and regarding joint holders, be the only person recognised by the Company as having any title to any Securities registered in the name of such Securities Holder, including for voting purposes.

4.5 **Transmission of Securities**

The following provisions relating to the transmission of Securities apply:

- 4.5.1 subject to section 51(6)(b) of the Companies Act and any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of articles 3.3.3 and 3.3.4 as having any title to any Securities (and also the legal guardian of any Securities Holder who is a minor and any person who obtains title to any Securities by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he or she claims to act under this article or as to his or her title to any Securities, and subject to the transfer provisions in this MOI but not the right of pre-emption referred to in article 4, transfer such Securities to himself or to any other person;
- 4.5.2 a person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a

registered Securities Holder who is deceased or the estate of a Securities Holder whose estate has been sequestrated or who is otherwise under a disability or of his or her appointment as the liquidator of any body corporate which is a Securities Holder, shall be entered in the Securities Register *nominee officii*, and shall thereafter, for all purposes, be deemed to be a Securities Holder.

5. Shareholders' rights of pre-emption on transfer of Shares

5.1 Transfer of Ordinary Shares and Shareholder Loans

5.1.1 No Ordinary Shareholder may transfer any Ordinary Shares without simultaneously transferring a proportionate percentage of his/her/its Shareholder Loans.

5.1.2 No Ordinary Shareholder may transfer any Ordinary Shares or Shareholder Loans unless such Ordinary Shareholder ("**the Seller**") first offers to sell such Ordinary Shares and an equivalent proportion of his/her/its Shareholder Loans to the other Ordinary Shareholders ("**the Offerees**") rateably in proportion to their respective percentage holdings of the entire issued Ordinary Share capital of the Company at the time of the Seller's offer.

5.1.3 The Seller's offer in terms of article 5.1.2:

5.1.3.1 shall be in writing and delivered to the Offerees;

5.1.3.2 shall remain open for acceptance by the Offerees for a period of 90 (ninety) days after receipt;

5.1.3.3 shall specify the Shareholder Loans and the number of Ordinary Shares which the Seller is offering to sell;

5.1.3.4 shall be accompanied, where applicable, by:

5.1.3.4.1 a written memorandum of the consideration and all the other terms and conditions that have been offered to the

Seller orally and/or which is subsequently reduced to writing; or

5.1.3.4.2 a true and complete copy of any written offer made to the Seller (which sets out the consideration and all other terms and conditions of such offer),

made by any *bona fide* third party in respect of the Seller's Ordinary Shares in the Company and Shareholder Loans and which the Seller wishes to accept, and which in either case must contain the name of the *bona fide* third party, and in the case where the *bona fide* third party is an agent, the name of its ultimate principal (if any);

5.1.3.5 shall, if there is a *bona fide* offer from a *bona fide* third party, be deemed to be for the consideration and subject to, *mutatis mutandis*, the terms and conditions set out in the written memorandum or written offer referred to in article 5.1.3.4;

5.1.3.6 shall if there is no offer from a *bona fide* third party as contemplated in article 5.1.3.4, state that fact and shall state the consideration and full terms and conditions upon which the Seller wishes to sell its Ordinary Shares in the Company and Shareholder Loans;

5.1.3.7 shall be subject to the conditions that:

5.1.3.7.1 the Seller's offer may be accepted by the Offerees only on the basis that all or part of the Ordinary Shares and Shareholder Loans offered are to be purchased;

5.1.3.7.2 unless the written offer referred to in article 5.1.3.4 or the Seller's offer referred to in article 5.1.3.6 provides to the contrary:

5.1.3.7.2.1 delivery of a written cession of the Shareholder Loans offered and accepted and delivery of the share

certificates in respect of the Ordinary Shares offered and accepted together with transfer forms in respect of such Ordinary Shares duly completed in accordance with the MOI of the Company shall be made to the Offerees within 30 (thirty) days after acceptance of the Seller's offer; and

5.1.3.7.2.2 the consideration referred to in article 5.1.3.4 or article 5.1.3.6, as the case may be, shall be payable against delivery as set out in article 5.1.3.7.2.1 above;

5.1.3.7.3 the consideration shall be in money and be expressed only in the currency of the Republic of South Africa; and

5.1.3.7.4 if there is no offer from a *bona fide* third party as contemplated in this article 5.1.3 above, state that fact; and

5.1.3.8 subject to article 8, shall not be subject to any other terms or conditions.

5.1.4 Any of the Offerees may accept an offer made in terms of article 5.1.2 in respect of a greater proportion of the Ordinary Shares and Shareholder Loans offered than its *pro rata* share thereof, provided that such acceptance will only be effective in respect of the excess if and to the extent that any other Offeree accepts the offer in respect of less Ordinary Shares and Shareholder Loans than its respective *pro rata* entitlement and provided, however, that if acceptances in terms of this article 5 together constitute acceptances for more than the Ordinary Shares and Shareholder Loans offered, then the Ordinary Shares and Shareholder Loans offered shall be apportioned amongst the accepting Offerees in the proportions as near as may be to their existing shareholdings in the Company on the date of the Seller's offer, but on the basis that no Offeree shall be obliged to purchase more Ordinary Shares and Shareholder Loans than the number of Ordinary Shares

accepted by it and the proportion of Shareholder Loans corresponding to the Ordinary Shares thus acquired by it.

- 5.1.5 If any of the Offerees fail to accept the Seller's offer to it within the period of 90 (ninety) days referred to in article 5.1.3.2, the Seller shall offer the Ordinary Shares and Shareholder Loans to the remaining Offerees, excluding the Ordinary Shareholder who failed to accept the Seller's offer, *mutatis mutandis* on the conditions set out in this article 5, provided that the offer in such an event will only remain open for acceptance for a period of 10 (ten) days after receipt thereof by the remaining Offerees.
- 5.1.6 If the offer referred to in article 5.1.2 is accepted in writing in respect of all the Ordinary Shares and Shareholder Loans offered or such lesser number of the Ordinary Shares and Shareholder Loans offered as the Seller may agree to in writing, by any of the Offerees, the resulting sales shall be indivisibly interrelated, the intention being to ensure that if any one of the Offerees breaches its obligations pursuant to the sale resulting from the acceptance of the offer, and if as a result the Seller elects to cancel any such sale, it shall be entitled (but not obliged) to cancel all the other sales to the other Offerees, even though they may have complied with their obligations.
- 5.1.7 Should the Offerees not accept the Seller's offer in terms of articles 5.1.2, 5.1.4 or 5.1.5 (as applicable) in respect of all Ordinary Shares and Shareholder Loans offered, the Seller shall be entitled, subject to the remainder of the provisions of this article 5, for a period of 90 (ninety) days after the expiry of the time for acceptance by the Offerees, to dispose of all the Ordinary Shares and Shareholder Loans included in the Seller's offer to the *bona fide* third party whose offer was disclosed in the Seller's offer referred to in article 5.1.3 or, if the Seller's said offer disclosed that there was no *bona fide* third party offeror in respect of the Ordinary Shares and the Shareholder Loans, then to any other *bona fide* third party, provided that in either instance:

- 5.1.7.1 the Ordinary Shares and the Shareholder Loans are transferred to the other third party only at a price and on terms and conditions not more favourable to the purchaser than the price, terms and conditions set out in the Seller's offer referred to in article 5.1.3, provided that the fact that the Seller gives any *bona fide* third party normal warranties excluding any profit warranty shall not constitute terms more favourable than those given to the remaining Ordinary Shareholders who will not be given any warranties provided that the giving of any warranties to a *bona fide* third party is not a method, of permitting the *bona fide* third party to pay a lower purchase price to frustrate the pre-emption; and
- 5.1.7.2 the third party agrees to purchase all the Ordinary Shares and Shareholder Loans which were offered by the Seller in terms of article 5.1.2.
- 5.1.8 If all the Ordinary Shares and Shareholder Loans offered for sale by the Seller are not sold to the *bona fide* third party within the 90 (ninety) days referred to in article 5.1.4, then the provisions of articles 5.1.2 to 5.1.6 shall again apply to the Seller's Ordinary Shares and Shareholder Loans.
- 5.1.9 If the Seller's offer in terms of article 5.1.3 is accepted in accordance with the provisions of this article 5, the Seller irrevocably authorises the Offerees to sign any share transfer form on the Seller's behalf for purposes of effecting due transfer to the Offerees of the Ordinary Shares sold against payment of the purchase price.
- 5.1.10 Unless otherwise specified in the Seller's offer, payment for Ordinary Shares and Shareholder Loans acquired by other Ordinary Shareholders in terms of this article 5 shall be effected in cash against delivery of a written cession of the Shareholder Loans and transfer of the Ordinary Shares so acquired within 30 (thirty) days after acceptance of the offer.

- 5.1.11 Notwithstanding any provision to the contrary, any Seller who disposes of its Ordinary Shares and Shareholder Loans as contemplated in this article 5 shall be entitled to stipulate as a condition of such sale that:
- 5.1.11.1 the Seller shall be released *pro rata* to the number of Ordinary Shares sold, as a surety or guarantor or indemnitor on behalf of the Company, subject to the purchaser(s) of the Ordinary Shares in question binding itself as surety or guarantor or indemnitor in its stead; or
- 5.1.11.2 if the release contemplated in article 5.1.11.1 cannot be achieved, or pending such release being implemented, the Seller shall be indemnified by the purchaser of the Ordinary Shares and the Shareholder Loans *pro rata* to the number of Ordinary Shares sold against any claims made against the Seller by reason of such suretyship, guarantee or indemnity. Such purchaser shall be liable for any amount payable in terms hereof together with value added tax levied in terms of the Value-added Tax Act, 1991 thereon.
- 5.1.12 The purchaser of any Ordinary Shares and Shareholder Loans pursuant to this article 5, shall pay the securities transfer tax and any other similar duties payable thereon.
- 5.1.13 Any Ordinary Shareholder who has sold all its Ordinary Shares in and Shareholder Loans against the Company in terms of the provisions of this article 5 shall procure the resignation of each Director appointed by such Ordinary Shareholder to the Board.
- 5.1.14 Notwithstanding that an Ordinary Shareholder may sell, transfer, exchange or dispose of or otherwise alienate any of its Ordinary Shares in or Shareholder Loans against the Company in accordance with the provisions of this MOI, it shall in no way affect or limit the obligations of such Ordinary Shareholder arising out of or in connection with this MOI notwithstanding the fact that such an Ordinary Shareholder has

disposed of or otherwise alienated any of its Ordinary Shares in and Shareholder Loans against the Company.

5.2 **Come Along**

If a bona fide third party offers to purchase all the Ordinary Shares of all the Ordinary Shareholders on identical pro rata terms, and provided that Ordinary Shareholders holding at least 80% (eighty per cent) of the issued Ordinary Shares in the Company accept such offer in respect of their Ordinary Shares (after first having complied with the relevant provisions of the MOI and the remaining Ordinary Shareholders having refused the offer made to them in terms of article 5.1 of this MOI), then the remaining Ordinary Shareholders shall be obliged to and shall be deemed to have accepted the offer of the third party in respect of all their Ordinary Shares in the Company. Each of the Ordinary Shareholders irrevocably and in *rem suam* hereby appoints any of the other Ordinary Shareholders at the time as its attorney and agent to do all such things as may be necessary to comply with the provisions of this article.

5.3 **Tag along**

If a bona fide third party offers to purchase Ordinary Shares constituting more than 60% (sixty per cent) of the all the issued Ordinary Shares in the Company, then notwithstanding that the Ordinary Shareholders to whom such offer has been made have complied with the provisions of article 5.1, such Ordinary Shareholders shall not be entitled to sell their Ordinary Shares to such third party (if any of the remaining Ordinary Shareholders to whom the offer has not been made by the third party, indicates in writing in response to the offer in terms of article 5 and the MOI that it wishes to Dispose of its Ordinary Shares in the Company) unless the same *pro rata* offer to acquire their Ordinary Shares is made by such third party also to the remaining Ordinary Shareholders concerned.

6. **Deemed Sale Provisions**

6.1 In the event that:

- 6.1.1 an Ordinary Shareholder is placed under curatorship, liquidation or under a winding-up order, whether provisionally or finally, voluntarily or compulsorily;
- 6.1.2 an Ordinary Shareholder takes any steps to be wound-up or liquidated, as the case may be, whether provisionally or finally and whether compulsorily or voluntarily;
- 6.1.3 an Ordinary Shareholder takes any steps to be deregistered in terms of the Companies Act or the legislation in terms of which it has been incorporated, as the case may be;
- 6.1.4 an Ordinary Shareholder enters into any compromise with its creditors generally, or offers to do so;
- 6.1.5 an Ordinary Shareholder or any Affected Person (as defined in section 128(1)(a) of the Companies Act), in relation to an Ordinary Shareholder, takes any steps in terms of Chapter VI of the Companies Act or similar steps under the legislation in terms of which it has been incorporated or in terms of which it conducts its business, as the case may be or any Ordinary Shareholder is placed under supervision by any court in terms of section 32(1)(c) of the Companies Act or similar legislation under the legislation in terms of which it has been incorporated or in terms of which it conducts its business, as the case may be;
- 6.1.6 the provisional trustee or the provisional liquidator of any Ordinary Shareholder who is provisionally sequestrated or provisionally liquidated;

(hereinafter collectively referred to as "**Trigger Event**"), then that Ordinary Shareholder ("**the Seller**") will be deemed on the day immediately preceding the date ("**the Relevant Date**") of the occurrence of a Trigger Event, to have made an offer to sell all of its Ordinary Shares and Shareholder Loans to the other Ordinary Shareholders, the Ordinary Shares at the Fair Market Value and the Shareholder Loans at the face value thereof, both as at the date on

which the Intention Notice, as defined below, is delivered to the Seller) *mutatis mutandis* in terms of the provisions of article 5, provided that the reference to the period in article 5.1 shall be deemed to have commenced only on the date on which any of the other Ordinary Shareholders have given notice in writing to the Seller, the Company and all other Ordinary Shareholders that it wishes to consider the offer (which notice may be given at any time after the offer is deemed to have been made) and which notice is referred to as "**the Intention Notice**". For the avoidance of doubt, if an offer is deemed to have been made as contemplated in this article 6.1, the Ordinary Shareholders shall be entitled at any time to give the Intention Notice and the time periods shall only start running from the date of such Intention Notice, provided that once any Ordinary Shareholder has delivered an Intention Notice, the time periods shall commence as regards all Ordinary Shareholders.

6.2 The deemed offer shall:

6.2.1 remain open for acceptance for a period of 90 (ninety) days after the date on which the Expert has determined the price concerned;

6.2.2 the purchase price for the Ordinary Shares and Shareholder Loans shall be payable within 30 (thirty) days after the date of acceptance of the offer against delivery of a written cession of the Shareholder Loans and the share certificate(s) together with a signed share transfer form dated but left blank as to transferee; and

6.2.3 the effective date of the sale and cession of the Ordinary Shares and the Shareholder Loans shall be the date on which the Intention Notice was given.

6.3 In the case of the liquidation (whether provisional or final), such Ordinary Shareholder's rights and obligations in terms of this MOI shall be deemed to have terminated on the day preceding the date of liquidation (whether provisional or final) or other legal incapacity of the Ordinary Shareholder concerned and be deemed to have been suspended on the day preceding the commencement of the business rescue proceedings or other legal

incapacity of the Ordinary Shareholder concerned. Upon such termination or suspension, as the case may be, the Ordinary Shareholder and/or its nominee/s as Directors shall be deemed to have resigned as Director/s of the Company (if applicable).

- 6.4 Each Ordinary Shareholder use its best endeavours to take all actions, sign all documents and do all other things as may be required to give effect to a disposal in respect of itself, and shall, to the extent required, procure the taking of all actions, the signing of all documents and the doing of all other things as may be required from any relevant person. Each Ordinary Shareholder shall further unconditionally and irrevocably undertake, to the extent that such Ordinary Shareholder is a company subject to the provisions of the Companies Act, to procure that its direct and indirect shareholders vote in favour of any special resolution required in terms of section 112 (as read with section 115) of the Companies Act, as the case may be, to the extent that any disposal by such Ordinary Shareholder or its holding company (whether direct or indirect) of all or the greater part of its undertaking or assets.

7. Permitted transfers by Ordinary Shareholders

The following transfers of Ordinary Shares and Shareholder Loans shall be permitted without triggering the rights of pre-emption under article 5, namely:

- 7.1 if the Ordinary Shareholder is a company, a transfer to its Subsidiary, provided that if that Subsidiary at any time ceases to be a Subsidiary of the original Ordinary Shareholder, it shall prior to it ceasing to be such Subsidiary, transfer all of the Ordinary Shares and Shareholder Loans it then holds to the original Ordinary Shareholder;
- 7.2 if the Ordinary Shareholder is a Subsidiary, a transfer by that Subsidiary to another Subsidiary in the same group subject to the same proviso as set out in article 7.1; and
- 7.3 if the Ordinary Shareholder is the beneficial owner of the Ordinary Shares, a transfer to a nominee of the beneficial owner.

8. **Regulatory Approval**

If the approval of any Regulatory Authority is required to any transaction contemplated in this MOI (including under the pre-emption provisions), the Ordinary Shareholders shall co-operate with each other in order to prepare, present, submit and/or file any necessary applications, notifications, filings and/or communications as may be required to be submitted and/or filed with the relevant Regulatory Authority as soon as reasonably possible and to the extent that any time periods have been imposed in this MOI for the completion of the particular transaction, which are inappropriate having regard to the time period permitted to the relevant Regulatory Authority to consider the matter, the time periods in question in this MOI shall be extended sufficiently so as to enable the requisite application and/or filing to be made with the relevant Regulatory Authority and for the relevant Regulatory Authority to respond.

Part III - Funding, Shareholder Loans, suretyships and guarantees

9. **Shareholder Loans**

- 9.1 The amount of funding required from time to time by the Company shall be determined by the Board.
- 9.2 Subject to article 10, all funding required from time to time as determined in accordance with the provisions of article 9.1, after having regard to such funding as is made available to the Company from:
- 9.2.1 Firstly: internal Company sources;
- 9.2.2 Secondly: outside sources and on the basis that the Board should endeavour to obtain funding from third party lenders (in respect of which the Ordinary Shareholders shall be obliged, subject to the amount falling within the annual budget approved by the Board, to provide security on a *pro rata* to their respective shareholding basis, should this be required);
- 9.2.3 Thirdly: provided on loan account by the Ordinary Shareholders *pro rata* to their respective shareholdings. For the avoidance of doubt, if

the funding falls within the budget approved by the Board in respect of a particular financial year, the Ordinary Shareholders shall be obliged to provide the security and/or funding *pro rata* to their respective shareholdings and if any funding excess of the funding provided for in the relevant budget shall not put an obligation on the Ordinary Shareholders to provide the security and/or funding as aforesaid; and

- 9.2.4 Fourthly: through a rights issue, if the Board elects.
- 9.3 Save as may be otherwise determined in writing by Ordinary Shareholders, Shareholder Loans shall be subject to the following terms and conditions, namely:
- 9.3.1 unless otherwise determined by the Board, they shall bear interest at the Prime Rate, compounded monthly in arrears, provided that any Shareholder Loans in excess of an Ordinary Shareholder's *pro rata* portion of shareholding shall be repaid first (as regards the disproportionate portion) to such Ordinary Shareholder and the disproportionate portion shall attract interest at the Prime Rate plus 3%. Such interest shall be due and payable annually in arrears;
- 9.3.2 subject to articles 9.3.1, 9.3.3 and 9.3.4 and subject to the availability of funds of the Company, they shall be repaid as may be agreed from time to time between the Company and Ordinary Shareholders;
- 9.3.3 they shall in any event be repaid on the granting of any order (whether provisional or final) or resolution proposed or passed, placing the Company under business rescue (including if any Affected Person (as defined in section 128(1)(a) of the Companies Act) takes any steps towards placing the Company under business rescue) or in liquidation or on the granting of any final judgement against the Company in an amount exceeding 50% of Ordinary Shareholders' funds (including Shareholder Loans) if the Company does not satisfy the judgement within 10 Business Days after it becomes final; and

9.3.4 all repayments by the Company to the Ordinary Shareholders shall be made *pro rata* to their respective loan accounts but to the extent that any Ordinary Shareholder's Shareholder Loans exceeds its *pro rata* share based on its Ordinary Shareholding in the Company such excess shall first be repaid.

9.4 Existing Shareholder Loans as at date of this MOI will be settled in accordance with their existing terms agreed by the Company and the respective Shareholder and any outstanding amounts due in terms thereof will not be used in calculating a Shareholder's *pro rata* obligation to fund in accordance with article 9.2.3 from date hereof.

10. Dilution

10.1 Should an Ordinary Shareholder ("**the Defaulting Party**") at any time fail to contribute any Shareholder Loans which it was obliged to contribute to the Company as agreed in terms of article 9.1 ("**the Defaulting Party's Contribution**") and remain in default for more than 30 (thirty) days after receipt of a written notice from the other Ordinary Shareholder ("**the Non-defaulting Party**") calling upon the Defaulting Party to remedy that default, the Non-defaulting Party may elect to contribute the Defaulting Party's Contribution as a Shareholder Loan or as share capital.

10.2 If the Non-defaulting Party wishes to contribute the Defaulting Party's Contribution on loan account as contemplated in 10.1, the Non-defaulting Party shall give written notice to that effect to the Defaulting Party and to the Company and such loan shall, notwithstanding any provision to the contrary contained in this Agreement:

10.2.1 be repaid in priority in terms of article 9.3.4; and

10.2.2 accrue interest at the Prime Rate plus 3% compounded monthly in arrears. Such interest shall be due and payable annually in arrears.

10.3 If the Non-defaulting Party wishes to contribute the Defaulting Party's Contribution as share capital as contemplated in 10.1, the Non-defaulting

Party shall give written notice to the Defaulting Party and the Company that it requires the shareholding to be adjusted.

- 10.4 Within 20 (twenty) Business Days after the date on which the notice was given in terms of 10.3, the Company shall issue to the Non-defaulting Party, against payment of the Fair Market value of the Shares, Ordinary Shares in the Company the value of which is equal to the value of the Contribution made by the Non-defaulting Party on behalf of the Defaulting Party as contemplated in 10.3.
- 10.5 The Shareholders shall vote in favour of all resolutions of the Company required to bring about the implementation of 10.4.

11. Suretyships and guarantees

- 11.1 Subject to the provisions of Annexure 1, each Ordinary Shareholder shall be obliged to give any guarantees and/or suretyships and/or indemnities to any third party in respect of the obligations of the Company, to such third party as shall be necessary to enable the Company to conduct its business from time to time and as approved by the Board in the annual budget. The Ordinary Shareholders shall use their best endeavours to give guarantees and/or suretyships and/or indemnities jointly *pro rata* to their respective Ordinary Shareholdings in the Company but not severally, where the third parties concerned are agreeable thereto.
- 11.2 For so long as the guarantees and/or suretyships and/or indemnities contemplated in article 11.1 are not provided by the Ordinary Shareholders *pro rata* to their Ordinary Shareholdings, the Company shall pay a fee monthly in arrears on the amount covered by any guarantee and/or suretyship and/or indemnity given by any Ordinary Shareholder which exceeds such Ordinary Shareholder's *pro rata* share aforesaid, at the rate of 2.5% (two point five percent) per annum, compounded monthly in arrears or otherwise as agreed.
- 11.3 If at any time an Ordinary Shareholder gives any guarantee and/or suretyship and/or indemnity to any party in respect of the obligations to such party of

the Company and if such guarantee and/or suretyship and/or indemnity was given with the written consent of the remaining Ordinary Shareholders, then any loss or damage which may be sustained in terms of any such guarantee and/or suretyship and/or indemnity shall be borne by the Ordinary Shareholders *pro rata* to their respective Ordinary Shareholdings in the Company and the Ordinary Shareholders indemnify each other accordingly.

Part IV - Proxies

12. Proxies

12.1 Form of proxy

Shareholders shall use the form as advised by the Board from time to time for purposes of appointing a proxy, which form must be delivered for administrative purposes only to the Company not less than 24 (twenty-four) hours before the time approved for the holding of the meeting or the resumption of an adjourned meeting at which the person named in the instrument proposes to vote.

12.2 Rights of Securities Holders as regards proxies

The provisions of the Companies Act, as read with this MOI, as regards proxies, shall apply *mutatis mutandis* to all Securities Holders.

Part V - Meetings and resolutions

13. Shareholders' meetings

13.1 Chairperson of Shareholders' meetings

13.1.1 The chairperson of the Board shall be entitled to chair Shareholders' meetings.

13.1.2 If, however, there is no chairperson or if he or she has notified his or her inability to attend a meeting or if at any meeting he or she is not present within 10 (ten) minutes of the time appointed for the meeting, the Shareholders who are entitled to exercise voting rights in relation

to the Company present and represented shall choose a Director to chair the meeting. If no Director is present or if none of the Directors present are willing to chair the meeting, then the Shareholders shall choose one of their own representatives at the relevant meeting, to be the chairperson of the meeting.

13.2 **Right to call meeting**

13.2.1 The Board may in terms of section 61(1) of the Companies Act, call a Shareholders' meeting at any time.

13.2.2 The Company authorises the company secretary of the Company (being a person nominated to this position by the Board) to call a Shareholders' meeting for the purposes of section 61(11) of the Companies Act.

13.3 **Location of Shareholders' meetings**

The Board may determine the location of Shareholders' meeting (including the location of any meeting which has been adjourned), provided that the location shall be the registered office of the Company or an alternate suitable venue in the Republic of South Africa which is reasonably accessible to each Shareholder or whether a Shareholders' meeting shall be held electronically.

13.4 **Electronic participation in Shareholders' meetings**

13.4.1 A resolution approved by the required majority of Shareholders who were connected by electronic communication at a Shareholders' meeting where:

13.4.1.1 all such Shareholders remained connected for the duration of the meeting;

13.4.1.2 the subject matter of the resolution had been discussed at such meeting; and

13.4.1.3 the chairperson, deputy chairperson or any Shareholder present at such meeting certified in writing that the aforementioned requirements have been met,

shall be valid and shall be deemed to have been passed on the date on which the meeting was held (unless a statement to the contrary is made in the minutes of such meeting).

13.4.2 Within 10 (ten) Business Days after the adoption or failing of a resolution at a meeting contemplated in article 13.4.1, the Company shall:

13.4.2.1 deliver to each Shareholder a copy of the resolution proposed with a statement describing the results of the vote, consent process or election as the case may be; and

13.4.2.2 insert a copy of the resolution and statement referred to in article 13.4.2.1 into the Company's minute book.

13.5 **Quorum for Shareholders' meetings**

The quorum requirement for meeting of Ordinary Shareholders to begin, or for a matter to be considered is Ordinary Shareholders holding 50% (fifty per cent) of the votes exercisable at the relevant meeting, provided that, for so long as each of Pelagic and Raubex holds at least 15% of the total issued Ordinary Shares, each of Pelagic and Raubex must be present or represented for a quorum to be present.

13.6 **Cessation of quorate Shareholders' meetings**

In terms of section 64(9) of the Companies Act, should any meeting of the Shareholders of the Company which has been constituted as quorate in terms of the Companies Act, cease to be quorate at any time during such meeting due to the departure of any Shareholder/s, then such meeting shall be adjourned as soon as the meeting ceases to be quorate without any matters being further considered or voted upon.

13.7 **Shareholders' resolutions**

13.7.1 Shareholder votes shall be decided by Ordinary Resolution except where the provisions of the Companies Act require a Special Resolution and subject to the provisions of Annexure 1.

13.7.2 A Special Resolution adopted is required for the matters set out in section 65(11) of the Companies Act.

13.8 **Minutes**

Minutes will be:

13.8.1 kept of all Shareholders' meetings;

13.8.2 settled by the chairperson of the relevant Shareholders' Meeting and circulated to all Shareholders within 30 (thirty) days following the Shareholders' meeting;

13.8.3 submitted to the next Shareholders' meeting for approval, with or without modification; and

13.8.4 signed by the chairperson of that meeting confirming the approval of the meeting.

13.9 **Right to demand a poll**

Each Shareholder shall be entitled to demand that voting take place on a poll at any meeting of Shareholders.

13.10 **Application of provisions to all Securities Holders**

The provisions of the Companies Act, as read with this MOI, as regards Shareholders' meetings and resolutions, shall apply *mutatis mutandis* to meetings of any Securities Holders.

13.11 Round robin resolutions of Shareholders

Round robin resolutions in terms of section 60 of the Companies Act, shall only be valid if supported and/or signed by Shareholders entitled to exercise sufficient voting rights for the resolution to have been adopted as an Ordinary Resolution or a Special Resolution, as the case may be, provided that for so long as Pelagic and Raubex are required for purposes of quorum, both must have signed the resolution.

14. Position if only one Shareholder

If the Company has only one Shareholder that Shareholder may exercise any or all of the voting rights pertaining to the Company on any matter, at any time, without notice or compliance with any other internal formalities, except that minutes of any meeting required under the Companies Act shall be kept in accordance with article 13.8.

15. General provisions regarding resolutions as regards legal proceedings against Shareholders and others

If any resolution of the Company is proposed that the Company institute any legal proceedings against any Shareholder or any party which is a related person or inter-related person (both terms as defined in the Companies Act) in respect of the Shareholder or against any Director of the Company, such resolution shall be deemed to be within the Shareholders' domain not the Directors' domain. If any Shareholder vetoes any such resolution, and as a result the requisite majority to pass the resolution cannot be obtained then, provided that the remaining Shareholders furnish an indemnity to the Company against all costs, losses or damages of whatsoever nature which the Company may sustain in bringing any such legal proceedings, such vetoing Shareholder shall be deemed to have voted in favour of the resolution.

Part VI - Directors and officers

16. Directors and officers

16.1 Composition of the Board

16.1.1 The Board shall comprise of not less than the minimum number of directors required under the Companies Act.

16.1.2 Each alternate Director is entitled to act as a Director in the absence of the Director for whom he or she is an alternate.

16.1.3 Appointment of Directors

16.1.3.1 The holders of each 15% (fifteen per cent) of the issued Ordinary Shares in the Company shall be entitled by written notice to the Company to nominate 1 (one) person for each such 15% (fifteen per cent) held, to be appointed as Directors. Such Shareholders shall be entitled to appoint and/or remove any such Directors appointed and to replace any such Director who is so removed or who ceases for any other reason to be a Director of the Company, subject to article 16.1.3.2.

16.1.3.2 At least 75% (seventy-five per cent) of the Directors, or any alternate Directors must be elected by Shareholders.

16.1.4 Alternate Directors

16.1.4.1 Any Ordinary Shareholder shall have the power to nominate another person to act as alternate Director to the Director appointed by such Ordinary Shareholder in terms of article 16.1.3 in such Director's place during his/her absence or inability to act as such Director, and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors. A person may be appointed as alternate to more than 1 (one) Director. Where a person is alternate to more than 1 (one) Director or where an alternate Director is a Director,

he/she shall have a separate vote, on behalf of each Director he/she is representing in addition to his/her own vote, if any. Each Ordinary Shareholder irrevocably undertakes in favour of the other/s to vote in favour of the appointment of any alternate to a Director, and not to propose, or to vote in favour of any resolution for the removal of any alternate appointed by an Ordinary Shareholder unless the Ordinary Shareholder who appointed the alternate itself votes in favour of such resolution or the provisions of this MOI require that such alternate be removed, in which case each Ordinary Shareholder shall be obliged to vote in favour of his removal and undertakes to do so. Any removal of an alternate as aforesaid shall be without any claim for compensation and the Ordinary Shareholder/s which appointed any such alternate Director hereby indemnifies and holds the Company harmless against any claim arising out of or in connection with such removal.

16.1.4.2

The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he/she were a Director, would cause him/her to cease to hold office or if the Director for which he or she is an alternate cease to be a Director, or gives notice to the secretary of the Company that the alternate Director representing him/her shall have ceased to do so. An alternate Director shall look to the Director for which he or she is an alternate for his/her remuneration.

16.1.5

Eligibility or qualification criteria for Directors

16.1.5.1

In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, without limiting the rights of Ordinary Shareholders and Directors to remove a Director under certain circumstances under the

Companies Act, a Director or Prescribed Officer shall not be entitled to remain serving as a Director or a Prescribed Officer of the Company if -

16.1.5.1.1 he or she is employed with the Company in terms of any contract of employment, and such employment contract is terminated;

16.1.5.1.2 subject to compliance with section 71 of the Companies Act, a majority of the Directors resolve that his or her office shall be vacated; and/or

16.1.5.1.3 if by notice in writing to the Company he or she resigns office.

16.1.5.2 The Directors shall not be obliged to hold any Shares to qualify them as Directors.

16.1.6 **Compulsory removal of Directors**

If any Ordinary Shareholder ceases to be entitled to appoint, remove and replace a Director and alternate Director in terms of article 16.1.4 by virtue of it ceasing to own and hold the requisite percentage of Ordinary Shares, then that Ordinary Shareholder:

16.1.6.1 shall be obliged to procure at its own cost and expense the removal and/or resignation of each Director nominated and appointed by it within 2 (two) Business Days of that Ordinary Shareholder ceasing to own or hold the required threshold of Shares; and

16.1.6.2 hereby indemnifies the Company and each of the other Ordinary Shareholders (and their respective Directors, officers, managers and employees) in respect of any claims, losses, costs or expenses whatsoever (including indirect and consequential damages) which may be suffered or incurred by any of them arising out of or in connection with any such Director refusing to

resign within the aforementioned 2 (two) Business Day period for any reason whatsoever and/or arising out of any contract between the Director concerned and the Company and/or arising out of or in connection with the Ordinary Shareholders having to invoke the provisions of section 71 of the Companies Act for purposes of having the relevant Director/s removed as Directors and/or arising out of or in connection with any claim for wrongful or unfair dismissal or redundancy or any other claim for compensation arising out of such removal or loss of office.

16.1.7 **Undertakings of Ordinary Shareholders**

Each Ordinary Shareholder hereby irrevocably and unconditionally:

16.1.7.1 agrees, when requested by any other Ordinary Shareholder to do so, to vote all of its Shares in favour of any resolution to appoint, remove and replace any Director/s and/or alternate Director/s appointed in terms of articles 16.1.3 and/or 16.1.4 by the Ordinary Shareholder making the request; and

16.1.7.2 appoints the Ordinary Shareholder making the request as its proxy and agent in *rem suam* to represent it at any general meeting convened and held in terms of section 71(1) of the Companies Act for purposes of passing any resolution appointing, removing or replacing any one or more of the Director/s and/or alternate Director/s concerned, and to sign and execute any document (including any proxy or round-robin resolution) necessary or desirable to give effect to the provisions of this article.

16.1.8 **Removal of a Director by other Directors**

16.1.8.1 The authority of the Board to remove a Director, as set out in section 71(3) of the Companies Act, shall be subject to the Ordinary Shareholder who nominated the Director for

appointment in the first place, consenting in writing to such removal.

- 16.1.8.2 Any vacancy on the Board shall be filled by the Ordinary Shareholder who appointed the Director who has caused such vacancy to arise and each Ordinary Shareholder shall vote all of its Shares in favour of any resolution to fill any vacancy in accordance with article 16.1.7.1.

16.2 **Appointment of the chairperson of the Board**

The appointment of chairperson of the board shall rotate every two years between Pelagic and Raubex. Raubex shall appoint the initial person to preside as the chairperson of any Director meeting.

16.3 **Authority of a single Director to act**

If, at any time, the Company has only one Director, as contemplated in section 57(3) of the Companies Act, the authority of that Director to act without notice or compliance with any other internal formalities applies, save that any resolution must be recorded and sections 73(6) and (7) of the Companies Act shall apply.

16.4 **Round robin resolutions of the Board**

- 16.4.1 The following provisions limiting or restricting the authority of the Board to consider a matter other than at a meeting, as contemplated in section 74 of the Companies Act apply:

16.4.1.1 a written resolution (which may consist of 1 (one) or more documents in like form) signed by a majority of Directors, which must include a Director appointed by each Ordinary Shareholder, and inserted in the minute book, shall be valid and effective in accordance with its terms as if passed at a meeting of Directors;

16.4.1.2 unless the contrary is stated therein, any such resolution shall be deemed to have been passed on the latest date on which it was signed by the majority Directors; and

16.4.1.3 it is recorded that, provided that proper notice of the written resolution was duly given to each Director in terms of this MOI, any failure by any Director to sign any written resolution within the period stipulated in the notice to the Director shall not affect the validity of such written resolution; provided further that such written resolution is passed by the Directors holding the requisite number of votes.

16.4.1.4 If 75% of the Directors agree, such meetings will be correctly constituted and may dispense with notice, provided that one Director of both Pelagic and Raubex approve of such dispensation.

16.5 **Requisitioning of Directors' meetings**

The right of the Directors to requisition a meeting of the Board, as set out in section 73(1)(b) of the Companies Act, may be exercised in terms of section 73(2) of the Companies Act, by any one Director.

16.5.1 **Board meetings by electronic communication**

16.5.1.1 A resolution signed by the number of Directors required to vote in favour of a resolution who were connected by electronic communication at a Board meeting where a quorum was present where:

16.5.1.1.1 all such Directors remained connected for the duration of the electronic meeting;

16.5.1.1.2 the subject matter of the resolution has been discussed; and

16.5.1.1.3 the chairperson or any other Director present in person or electronically certified in writing that the aforementioned requirements have been met,

shall be valid and shall be deemed to have been passed on the date on which the meeting was held (unless a statement to the contrary is made in the minutes of the meeting).

16.5.1.2 Such resolution may consist of several documents, each of which may be signed by one or more Directors who participated in the electronic meeting.

16.5.1.3 Within 10 (ten) Business Days after the adoption or failing of a resolution at a meeting contemplated in article 16.5.1.1, the Company shall:

16.5.1.3.1 deliver to each Director a copy of the resolution proposed with a statement describing the results; and

16.5.1.3.2 insert a copy of the resolution and statement referred to in article 16.5.1.3.1 in the Company's minute book.

16.5.2 **Notice of Board meetings**

16.5.2.1 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4) of the Companies Act is amended to the extent set out in articles 16.5.2.2 to 16.5.2.7.

16.5.2.2 Subject to section 73(5)(a) of the Companies Act, a notice of a Board meeting must be in writing and delivered to each Director of the Company (including each alternate Director) so as to be received by the Director in question in the ordinary course not less than 48 (forty eight) hours before the date appointed for the Board meeting, provided that in exceptional circumstances, as determined by the chairperson of the Board, the notice period may be shortened as is necessary to allow the Directors to attend to the exceptional circumstances in question.

16.5.2.3 Such notice of a Board meeting may be in any form determined by the Board but must as a minimum include:

- 16.5.2.3.1 the date, time and place for the meeting;
- 16.5.2.3.2 a detailed agenda for the meeting;
- 16.5.2.3.3 information with respect to the availability of participation in the meeting (and in the postponement or adjournment of the meeting) by electronic communication and the necessary information to enable Directors (including their alternates) to access the available medium or means of communication; and
- 16.5.2.3.4 the general purpose of the meeting.

16.5.2.4 The contents of the notice and agenda shall be prepared by and be the responsibility of the chairperson of the Board.

16.5.2.5 Any Director may at any time require that any matter be included on the agenda for a meeting.

16.5.2.6 Board meetings will be held at a reasonable time and venue or electronically as provided herein. In the ordinary course, Board meetings will be held at the principal place of business of the Company or at such other venue as the Board may agree to in writing or electronically as provided herein.

16.5.2.7 The Company shall pay all reasonable and necessary travel and associated costs required to be incurred by the Directors (or their alternates) in fulfilling their obligations to attend any meeting.

16.5.3 **Defective or inadequate notice of Board meeting**

The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) of the Companies Act shall not apply, unless all Directors consent to the relevant meeting continuing.

16.5.4 **Quorum for Board meetings**

The quorum for a Board meeting shall be a majority of Director/Directors, provided that at least 1 (one) Director or alternative Director of each Ordinary Shareholder, representing more than 15% of the issued ordinary share capital, must be present, who must be personally present at the meeting or participate in person electronically, before a vote may be called at such meeting.

16.5.5 **Adjournment and postponement of Directors meetings**

16.5.5.1 **Automatic postponement of a meeting**

16.5.5.1.1 If within 30 (thirty) minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically postponed (without any motion, vote or further notice) for one week.

16.5.5.1.2 The 30 (thirty) minute limit may be extended for a reasonable period not exceeding 2 (two) hours by the chairperson of the meeting.

16.5.5.2 **Automatic adjournment of a meeting**

If at the time a matter is to be considered at a Board meeting, such meeting ceases to be quorate and there is no other business on the agenda which can be dealt with, the meeting is automatically adjourned (without any motion or vote) for one week.

16.5.5.3 **Further notice required for postponed or adjourned meeting**

Further notice of a Board meeting that is postponed or adjourned is required on the same basis as the original meeting, which is being postponed or adjourned, save that notice shall be given within 2 (two) Business Days of the date on which the meeting which is being postponed or adjourned was held and the only

items on the agenda may be the items which were on the agenda for the original meeting.

16.5.5.4 Deemed quorum at a postponed or adjourned meeting

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those Directors, present in person at the Board meeting including those participating electronically, will be deemed to constitute a quorum.

16.5.5.5 Adjournment by Directors

A Board meeting may otherwise be adjourned by majority vote of the Directors present at the meeting.

16.6 Voting, approval of resolutions and minutes of Directors meetings

16.6.1 Number of votes at Board meetings

Subject to the exclusions in the Companies Act, each Director or alternate Director shall have one vote.

16.6.2 Approval of resolutions

16.6.2.1 Except as provided for in article 16.6.4, resolutions of Directors in order to be of force and effect must be approved by a majority of the votes exercised.

16.6.2.2 If any person appointed as a Director is a Director of a competitive business to that carried on by the Company from time to time, any resolution to be considered by the Directors in which such person could have a conflict of interest by reason of his directorship of the competing company, shall not be dealt with by the Directors but shall be submitted to the Shareholders for consideration.

16.6.3 **Tied votes**

The chairperson of the Board shall not have a casting vote and shall not have a vote if he/she is not a Director.

16.6.4 **Annual Budget**

16.6.4.1 The finalising and approval of the annual budget or other similar operating plans of the Company shall require unanimous Board approval.

16.6.4.2 Should increases in future annual budgets (excluding capital expenditure), be less than 10% (ten per cent) more of the annual budget for the immediately preceding year, the Board shall be deemed to unanimously agree such change in the event that unanimous Board approval is not obtained.

16.6.4.3 Without binding the Board in any manner, the Board shall, in maintaining a maximum level of gearing, take cognisance of the level of gearing in the Company as at the beginning of each financial year and, the then current economic conditions (including commodity prices), the future growth of the business and the future commitments of the Company.

16.6.5 **Minutes**

Minutes will be:

16.6.5.1 kept of all Board meetings;

16.6.5.2 settled by the chairperson of the Board and circulated to all Directors within 30 (thirty) days following the Board meeting;

16.6.5.3 submitted to the next Board meeting for approval, with or without modification; and

16.6.5.4 signed by the chairperson of that meeting confirming the approval of the meeting.

16.7 **Committees of the Board**

16.7.1 **Authority of the Board to appoint committees of Directors and to delegate to any such committee any of the authority of the Board**

16.7.1.1 The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1) of the Companies Act, and to include in any such committee persons who are not Directors, as set out in section 72(2)(a) of the Companies Act is not amended by this MOI.

16.7.2 **Authority of a committee appointed by the Board**

16.7.3 The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c) of the Companies Act is amended to the extent set out in article 16.7.3.1.

16.7.3.1 A committee appointed by the Board:

16.7.3.1.1 may with the prior approval in each instance of the Board, consult with or receive advice from any person, at the expense of the Company;

16.7.3.1.2 shall have the full authority of the Board in respect of a matter referred to it, save that in the exercise of the authority delegated to it, and in carrying out its duties, the committee shall comply with any mandates or instructions that may from time to time be given by the Board;

16.7.3.1.3 may make recommendations to the Board on any matter within its remit, provided that the final decision on such matters shall be taken by the Board; and

16.7.3.1.4 may include persons who are not Directors and such non-Director members may not vote on any matter to be decided by the committee.

16.8 Authority of the Board to manage and direct the business and affairs of the Company

The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Companies Act is amended to the extent set out in article 16.8.1.

16.8.1 Management of the Company

16.8.1.1 Board's authority to manage and direct business affairs

The Directors' powers to manage and direct the business and affairs of the Company, as contemplated in section 66(1) of the Companies Act shall not be limited.

16.8.1.2 Delegation to executive Directors

The Board may delegate all or any of its powers or authority in article 16.8.1.1 to the executive Directors, but any such delegation shall not relieve any Director of any of his/her duties or responsibilities. Any such delegation may be wholly or partially withdrawn by the non-executive Directors at any time.

16.8.1.3 General

16.8.1.3.1 The Company shall:

16.8.1.3.1.1 keep accurate books and records reflecting all transactions entered into by the Company and all amounts owing and owed by the Company;

16.8.1.3.1.2 prepare and submit to the Board and a duly authorised representative of each Shareholder:

16.8.1.3.1.2.1 other information which the Board may reasonably require, including annual budgets; and

16.8.1.3.1.2.2 minutes and agendas of the meetings of the Board and Shareholders of the Company.

- 16.8.1.3.2 The Company shall:
- 16.8.1.3.2.1 comply with all statutory obligations applicable to the Company;
 - 16.8.1.3.2.2 comply with the provisions of this MOI and the Shareholders' Agreement;
 - 16.8.1.3.2.3 implement and comply with such financial systems as its board may from time to time instruct;
 - 16.8.1.3.2.4 take out such insurance as may be recommended by the Board from time to time;
 - 16.8.1.3.2.5 implement adequate internal controls for the protection of the Company's assets, if any; and
 - 16.8.1.3.2.6 maintain adequate records and reconciliation, including value added tax returns.

16.8.1.4 **Corporate governance**

- 16.8.1.4.1 The Shareholders agree that the Company will conduct the Business as a separate, independent and autonomous going concern.
- 16.8.1.4.2 The Parties acknowledge and accept that each person nominated and appointed as a Director shall owe his/her fiduciary duties first and foremost to the Company and shall be expected and required, without in any way limiting his/her fiduciary duties, to act at all times in the best interests of the Company.

16.9 **Directors' expenses**

The Directors shall be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company and in attending meetings of the Board or committees thereof, and if any

Director is required by the Company to perform any services in addition to his or her services as a Director, or to reside abroad, or shall be specifically occupied about the Company's business, such Director shall be entitled to receive such remuneration as is determined by a disinterested quorum of Directors, which remuneration may be in addition to or in substitution for any other remuneration payable.

16.10 **Indemnities**

16.10.1 The authority of the Company to advance expenses to a Director, or to indemnify a Director, and to purchase insurance to protect the Company, or a Director, shall be as contemplated in the Companies Act.

16.10.2 Article 16.10.1, read with section 78 of the Companies Act, shall apply *mutatis mutandis* to the secretary of the Company, Prescribed Officers, and employees of the Company as if such persons were Directors for the purposes of section 78, to the extent permitted in terms of the Companies Act and the Listings Requirements.

Part VII- Access to information

17. **Securities Holders' right to additional information**

In addition to the rights to access information set out in sections 26(1) and 31 of the Companies Act, every person who has a beneficial interest in any of the Securities has the further rights to information, set out in this article 17.

17.1 **General**

17.1.1 The Board may, from time to time, in its discretion, grant a person who has a registered or beneficial interest in any of Securities the right to access any information pertaining to the Company in addition to that to which he is entitled in terms of section 26(1) of the Companies Act.

17.1.2 The Board may from time to time in its discretion grant any person the right to access any information pertaining to the Company as contemplated in section 26(3) of the Companies Act provided that the

confidential information of the Company is adequately protected and subject to article 17.1.3 below. No such right if conferred, may negate or diminish any mandatory protection of any record, required by or in terms of Part 3 of the Promotion of Access to Information Act, 2000, as amended.

17.1.3 For the purposes of section 26(1) of the Companies Act, Shareholders may be treated by the Company as constituting persons who hold or have a beneficial interest in securities issued by the Company, or to the extent necessary, Shareholders, will be treated as being entitled in terms of section 26(3) of the Companies Act to access to the Company records on the same basis provided for in, and subject to section 26(1) of the Companies Act.

17.1.4 The grant of any additional information right(s) shall be on such terms and subject to such conditions and for such period(s) as the Board may determine in writing, provided always that the confidential information of the Company is adequately protected.

17.2 **Periodic reports to Shareholders**

The Board shall prepare and send or cause to be prepared and sent to each Shareholder such documents, reports and financial information as the Board may determine from time to time and within periods and frequency as determined by the Board from time to time.

17.3 **Shareholders' access to the Company's financial records**

Any Shareholder shall upon written request to the Company in relation to any specific information required by such Shareholder and upon furnishing *bona fide* reasons for such request, subject to having given reasonable written notice to the Company, and during business hours, have access to and the right to inspect such books and accounts of the Company relating to the specific information requested. Any costs relating to accessing or procuring information under the provisions of this article 17.3 shall be for the account of the Shareholder requesting such information. Nothing in this article shall

give any of the Shareholders a right of access to any asset of the Company or any subsidiary of the Company.

Part VIII - General

18. Distributions

- 18.1 Subject to (i) the provisions of the Companies Act, and particularly section 46; and (ii) compliance with the provisions of this MOI, including the requirements for Specially Protected Matters, the Board may make distributions to Shareholders. For purposes of this article 18, "*distribution*" has the meaning given to it in section 1 of the Companies Act.
- 18.2 Any distribution declared may be paid and satisfied either wholly or in part by the distribution of specific assets or in cash or in one or more of such ways as the Board or the Ordinary Shareholders may determine at the time of authorising the distribution, subject to the provisions of the Companies Act.
- 18.3 All cash distributions, interest or other sums payable in cash to Shareholders may be paid by electronic funds transfer or otherwise, as specified in the resolution declaring the distribution, or in the absence of the method of payment being specified in such resolution, in such manner as the Board or the Ordinary Shareholders by Ordinary Resolution may from time to time determine. The payment by electronic transfer into the bank account recorded in the bank account register of the Company (if any) nominated by the Shareholder, or in the case of joint holders into the bank account nominated by the Shareholder whose name stands first in the Securities Register in respect of the Share, shall be a good discharge by the Company in respect thereof.
- 18.4 Every payment of a distribution made by electronic transfer shall be made at the risk of the Shareholders or joint holders, as the case may be. The Company shall not be responsible for the loss or misdirection of any electronic transfer if made into the bank account recorded in the bank account register of the Company (or such other bank account) nominated by the Shareholder.

- 18.5 No distribution shall bear interest against the Company.
- 18.6 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 18.7 All unclaimed distributions that are due to a Shareholder/s shall be held by the Company in trust until claimed, provided that distributions unclaimed for a period of 3 (three) years from the date on which they were declared or paid (as the case may be) may be declared forfeited by the Directors for the benefit of the Company. All unclaimed monies, other than distributions, that are due to a Shareholder/s shall be held by the Company in trust for such period as the Board may determine by resolution (which may not be less than 5 years), whereafter such unclaimed funds will be paid to the Guardian's Fund of the Court.

19. Deadlock

- 19.1 If the required majority for the passing of a Directors' resolution cannot be obtained or if there is a deadlock in that there is an equality of votes, such particular resolution, excluding any resolution required in terms of clause 16.6.4 where unanimous consent is required failing which the resolution shall not pass, only shall cease *ipso facto* to be within the Directors' domain and shall be put to the Shareholders.
- 19.2 If the required majority for the passing of a Shareholders' resolution cannot be obtained or if there is a deadlock in that there is an equality of votes, a dispute shall be deemed to exist between the Shareholders, the resolution in question shall fail. Any such deadlock shall not constitute a ground for the winding-up of the company.

20. Partnership

The relationship between the Securities Holders as such shall not be construed as that of partners.

21. Delivery and publication of notices and certain documents

- 21.1 All notices and documents required to be published as contemplated in the Companies Act or this MOI shall be delivered by the Company in accordance with sections 6(9), 6(10) and 6(11), read with Regulation 7 and Table CR3, to each Securities Holder who is required to receive notice in terms of the Companies Act or this MOI to any of his/her/its registered addresses recorded in the Securities Register.
- 21.2 Without in any way limiting the operation of article 21.1 and the Company's ability to give notices, documents, records or statements or notices of availability of the foregoing by any other lawful means, any Security Holder who/which has furnished an e-mail address (or other electronic address or communication details) to the Company, by doing so –
- 21.2.1 authorises the Company to use electronic communication (including e-mail) to give notices, documents, records or statements or notices of availability of the foregoing to him/her/it; and
- 21.2.2 confirms that same can conveniently be printed by the Security Holder within a reasonable time and at a reasonable cost.
- 21.3 If a Securities Holder has not notified an address (including e-mail address or other electronic address or communication details) in terms of article 3.3, he/she/it shall be deemed (for all purposes, including for the purposes set out in article 21.1 and article 22) to have nominated the Company's registered address, from time to time.
- 21.4 The notice may be given by the Company to the persons entitled to a Security in consequence of the death or insolvency of a Securities Holder, or by sending it through the post in a prepaid envelope addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been supplied) by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred.

- 21.5 Where a notice is sent by post, the post office shall be the agent for the Securities Holder and the Securities Holder shall, from the time and date of delivery of the notice to the post office, bear all risks associated with that notice including of non-delivery or late delivery of the notice.
- 21.6 A notice given to any Securities Holder shall be binding on all persons claiming on his death or on any transmission of his interests.
- 21.7 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

22. **Arbitration**

- 22.1 If any dispute arises between any of the Securities Holders and/or the Company in relation to any matter pertaining to, or arising out of this MOI, or arising out of the termination thereof, then such dispute shall, at the instance of any of the Securities Holders and/or the Company, be referred to arbitration by a single arbitrator, in accordance with the provisions of this article 22.
- 22.2 The arbitration shall be held -
- 22.2.1 at Johannesburg;
- 22.2.2 subject to the provisions of this article 22, in accordance with the Arbitration Foundation of Southern Africa ("**AFSA**") rules relating to expedited arbitrations ("**Rules**"); and
- 22.2.3 as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) Business Days after it is demanded by any one of the Securities Holders and/or the Company. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 22.3 The arbitrator shall be a practicing senior counsels of at least 15 (fifteen) years standing as such, agreed upon between the parties to the dispute, provided that should such parties fail to agree on an arbitrator within 10 (ten) Business Days after the dispute is referred to arbitration in terms of article

22.1, the arbitrators shall, at the written request of any of the Securities Holders and/or the Company, be appointed by the President for the time being of AFSA or its successor. If that person fails or refuses to make the nomination, any of the Securities Holders and/or the Company may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

22.4 The arbitrator shall determine which of the Securities Holders and/or the Company shall pay the costs of and incidental to the arbitration or, if more than one is to contribute, the ratio of their respective contributions, and the scale on which such costs are to be paid.

22.5 Subject to each of the Securities Holders' and/or the Company's rights of appeal to a tribunal of arbitrators in accordance with the Rules, the Parties irrevocably agree that the decision of the arbitrator shall be final and binding on them, shall be carried into effect, and shall be capable of being made an order of the High Court of South Africa.

22.6 The provisions of this article 22 -

22.6.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and none of the Securities Holders and/or the Company shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

22.6.2 are severable from the rest of this MOI and shall remain in effect despite the termination of or invalidity for any reason of this MOI; and

22.6.3 shall not preclude any of the Securities Holders and/or the Company from obtaining interim relief on an urgent basis from the High Court of South Africa pending the decision of the arbitrators.

22.7 The Parties shall keep the evidence in the arbitration proceedings and any order made by the arbitrators confidential unless otherwise contemplated herein.

- 22.8 The arbitrators shall be obliged to give their award in writing fully supported by reasons, unless otherwise mutually agreed to by the Parties in writing.
- 22.9 The arbitrators shall have the power to give default judgement if any of the Securities Holders and/or the Company fails to make submissions on due date and/or fails to appear at the arbitration.

ANNEXURE 1

SPECIALLY PROTECTED MATTERS

The Company and the powers of the Board are subject to the following restrictive conditions and prohibitions and the Ordinary Shareholders undertake to procure that the Company shall not engage in, agree to, perform or undertake any acts or matters as prescribed in the Companies Act and as listed below, except as may be approved or agreed to by Special Resolution:

1. the disposal or transfer (whether directly or through a subsidiary or other vehicle) of any business, share, asset or other investment (in the case of an asset otherwise than in the ordinary course of business of the Company);
2. the approval of any distribution to the Ordinary Shareholders of the Company in excess of the dividend policy of its holding company, which as at date of registration of this MOI is the distribution of 1/3 (one third) of the Company's profit after tax for the 6 (six) month financial period ending in August and February, respectively;
3. the establishment, acquisition or purchase of any business, share, asset or other investment (in the case of an asset otherwise than in the ordinary course of business of the Company);
4. the encumbering of any assets of the Company in any manner whatsoever not included in the approved annual budget;
5. any change in the basis of accounting or accounting policies from those used during the immediately preceding financial year otherwise than in accordance with International Financial Reporting Standards;
6. the revaluation of any material asset;
7. the determination of the scope of any Director's or group of Directors' authority and the delegation of any powers including the power to re-delegate;
8. any decision not to insure (or to insure for a lesser amount) against such risks as may be recommended by the Company's insurance brokers;

9. any termination of or amendment to the Company's retirement or medical aid funding;
10. any amendment of this MOI;
11. any increase in, alteration or reduction or conversion of the Company's authorised Shares;
12. any variation of any of the rights attaching to any Securities or class of Securities in the Company;
13. the issue or allotment by the Company of any capitalisation Shares, bonus Shares, share options, share warrants or debentures or debt instruments;
14. the repurchase of any of the Company's issued Shares;
15. the approval of the annual financial statements of the Company (in respect of which the approval shall not be unreasonably withheld);
16. the liquidation or winding-up or the discontinuance of the business activities of the Company;
17. any re-structuring of the Company or the merger of the Company and any other entity;
18. any material change in the nature of the business of the Company;
19. the incurring of any direct indebtedness (other than trade debt in the ordinary course of business) plus guarantees, suretyships, letters of comfort or other similar undertakings in excess of R50 000 000 (fifty million Rands) (other than to secure trade debt in the ordinary course of business) on an annual basis;
20. the instituting of litigation or settlement of any claim where the amount in dispute exceeds R25 000 000 (twenty-five million Rand) on an annual basis;
21. the listing of any Shares or other Securities on any recognised stock exchange;

22. the setting and amendment of the gross cost to company of the executive Directors and senior managers, and any bonus or incentive pay, from time to time;

23. any agreement between the Company and:

- a. any of its Shareholders;
- b. any of its Directors, officers, employees; or
- c. any company in which any of its Shareholders, Directors, officers or employees has a direct or indirect beneficial interest or which is directly or indirectly beneficially owned or controlled by any of its Directors, Shareholders officers or employees other than a bona fide transaction in the ordinary course of business.